United States Court of Appeals
for the Second Circuit

APPENDIX

ORIGINAL

77-1389

B

P/S

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 77-1389

UNITED STATES OF AMERICA,
Appellee,
against
ALFRED FAYER,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

MARTIN, OBERMAIER & MORVILLO
Attorneys for Appellant
Alfred Fayer
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UNITED STATES COURT OF APPEALS
FILED
OCT 25 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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A 1

DOCKET ENTRIES

MAGISTRATE Assigned
Office 1
0715
Disp./Sentence

U.S. vs. **76 CR 310**

ALFRED FAYER
(LAST, FIRST, MIDDLE)

☐ JUVENILE

Case Mo. 4 30
No. of Defs 1

MISHLER, J.

76	310	1
Yr.	Docket No	Def

U.S. MAG. CASE NO. ▶

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
18:1623	Did make false statements in trial case 75CR43	4

CLOSED

SUPERSEDING COUNTS

BAIL • RELEASE

☐ Denied
AMT Set
$. 000
Date
☐ Bail Not Made
☐ Status Changed (See Docket)

☐ Fugitive
☐ Pers Recog
☐ PSA

conditions
☐ 10% Deposit
☐ Surety Bond
☐ Collateral
☐ 3rd Prty Cust
☐ Other

II. KEY DATES & INTERVALS

ARREST or
U.S. Custody Began
Summons Served
First Appearance

① High Risk Date
INDICTMENT ☒ Information ☐ 4/30/76
Indict. Waived ☐
In Charging District
Superseding ☐ Indict/Info ☐

② ARRAIGNMENT 5/20/76
1st Plea Y
Final Plea

③ Trial Set For 12/6/76
✓ ☐ NG ☐ G ☐ NOL
G. Plea W/Drawn
☐ NG ☐ G ☐ NOL

TRIAL
Voir Dire ☐ 6/14/77
Trial Began 6.14.77 ☒ J ☐ N ☐ J
Trial Ended 6/22/77

④ Disposition of Charges 6-22-77
☒ Convicted
☐ Acquitted
☐ Dismissed:
☐ On All Charges
☐ On Lesser Offense(s)
☐ WOP: ☐ WP
☐ On Governm't Motion

SENTENCE

MAGISTRATE

		DATE	INITIAL/NO.
Search Warrant	Issued		
	Return		
Summons	Issued		
	Served		
Arrest Warrant Issued			
COMPLAINT ▶			
OFFENSE (In Complaint)			

INITIAL APPEARANCE DATE ▶
PRELIMINARY EXAMINATION OR ☐ REMOVAL HEARING — Date Scheduled ▶ / Date Held ▶
☐ WAIVED ☐ NOT WAIVED
☐ INTERVENING INDICTMENT
Tape Number
INITIAL/NO.

OUTCOME:
☐ DISMISSED
☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.

Ronald DePetris

ATTORNEYS Defense ☐ CJA ☐ Ret ☒ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD

Jack Korshin, Esq
370 East Old Country
Mineola, New York 11501

* Show last names and suffix numbers of other defendants on same indictment/information.

DATE	(DOCUMENT NO.) PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c)
4/30/76	Before BRAMWELL, J.- Indictment filed	
5-20-76	Before WEINSTEIN, J -case called - deft & counsel Jack Korshin present - deft arraigned and enters a plea of not guilty - deft O.R. The court disqualifies itself - Case to be reassigned to Judge Pratt.	
8/2/76	Notice of Readiness for trial filed.	
10-1-76	Before MISHLER, CH. J.-Case called-On deft's motion, trial set for 12-6-76-Pretrial set down for 11-19-76 at 11:30AM.	10-1-76T
11/17/76	Letter to Ronald DePetris, from Chief Judge Mishler, dated 11/17/76 filed. Re: the pre-trial scheduled for 11/19/76 has been adjd to 1/7/77 and trial has been adjd without date.	
1-7-77	Before MISHLER, CH. J. - Case called. Defendant & counsel present. 3-7-77 for trial.	12-6-76T 12-7-76N 3-7-77N
1-7-77	Letter from Allan H. Lind, M.D. 12-17-76 filed.	

7/13/78

A 2

Docket Entries

PAGE TWO

DATE	IV. PROCEEDINGS (continued) (DOCUMENT NO.)	V EXCLUDABLE DELAY (a)	Start Date End Date (b)	Ltr Code (c)	(d)
2.25.77	By Mishler, J.- Order filed that the deft. should be examine by Dr. Meyer Texon.				
3-7-77	Before Mishler, Ch J - case called - deft & atty Jack Korshin present - deft to be examined by Dr. Texon on 3-8-77. Case set down for status report on 3-18-77 at 9:30 am		Limit 3-18-77 4.1.77	N	
3.18.77	Before Mishler, J.- Case Called. Status Report adjd. to 3.25.77 at 9:30 A.M.				
3-25-77	Before Mishler, Ch J - case called - status report adjd to 4-1-77 at 9:30 am				
4.1.77	Before Mishler, J.- Case Called. Deft. present. Counsel not present. Counsel is ill. 5.2.77 for Trial.		4.1.77	I	
5.2.77	Before Mishler, J.- Case Called. Deft. present. Counsel not pressent. Counsel ill.				gp
6/13/77	Before Mishler, Ch J-case called-trial date reset for 6/14/77.jlj		6/13/77	I	
6.14.77	Before Mishler, J.- Case Called. Deft. & Counsel present. Trial ordered and begun. Jurors were selected and sworn. Trial continued to 6.15.77 at 10:00 A.M.				gp
6-15-77	Before Mishler, Ch J - case called - deft & counsel present - trial resumed - trial contd to June 16,1977.				
6.16.77	Before Mishler, J.- Case Called. Deft. & Counsel present. Trial resumed. Govt. rests. Motion by deft. to dismiss the indictment is denied. Trial continued to 6.20.77 at 9:30 A.M.				gp
6-20-77	Before Mishler, Ch J - case called - deft & counsel present - Trial resumed - deft rests - motion by deft to dismiss the indictment is denied - trial contd to June 21, 1977 at 10: am.				
6-20-77	By Mishler, Ch J - Order of sustenance filed.				
6.21.77	Before Mishler, J.- Case Called. Deft. & Counsel present. Trial resumed. Court charges jury. Alternate jurors discharged. Marshals sworn. Order of sustenance signed for lunch. At 11:30 A.M . the Jury retired for deliberations. At 5:30 P.M. the jury returned and asked to suspend for the day and to return tomorrow for further deliberations. Trial continued to 6.22.77 at 9:30 A.M. for further deliberations.				gp
6.22.77	By Mishler, J.- Order of Sustenance filed.				gp
6.22.77	By Mishler, J.- Order of Sustenance filed.				gp
~~6-27-77~~	~~Transcript filed dated June 16, 1977.~~ JFJ not certified				
6-22-77	By Mishler, Ch J - Order of sustenance signed (Lunch14 persons)				
6-22-77	Before Mishler, Ch J - case called - deft & atty Jack Korshin present - trial resumed - at 9:35 am the Jury retired for deliberations - at 2:10 PM the jury returned and rendered a verdict of guilty on all 4 counts - jury polled and discharged - trial concluded - jAll motions reserved to time of sentence - bail conditions contd - sentencing adjd without date - bail limits extended to the Republic of China until July 31, 1977.				
7-1-77	Transcript filed dated June 16, 1977.				

A 3

Docket Entries

NITED STATES DISTRICT COURT
RIMINAL DOCKET U.S. vs

D FAYER, Alfred

76 | 310 | 1
Yr. | Docket No. | Def.

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
7.20.77	Stenographer's Transcript dated June 15th, 1977 filed.				gp
7.20.77	Stenographer's Transcript dated June 20th, 1977 filed.				gp
7.20.77	Stenographer's Transcript dated June 21st, 1977 filed.				gp
7.20.77	Stenographer's Transcript dated June 22nd, 1977 filed.				gp
8-19-77	Before MISHLER, CH J - case called - deft & atty Jack Korshin present.- defts counsel renews motion to dismiss all counts of the indictment - motion denied. Deft is sentenced to pay a fine of $5,000 on count 4. Imposition of sentence is suspended on counts 1, 2 & 8 and deft is placed on probation for a period of one month. Execution of sentence is stayed pending appeal.				
8-19-77	Judgment & order of probation filed - certified copies to probation.				
8-19-77	Notice of appeal filed . Docket entries and duplicate of Notice mailed to the court of appeals				
8-29-77	Scheduling order filed that the record on appeal be docketed on or before 9-23-77.				
9/16/77	Sten's transcript dtd 8/19/77 filed.jj				
9=20-77	By MISHLER, CH J - Consent order filed that the joint appendix , Docket 75-1147 U.S.Court of appeals number shall be and the same hereby is part of the record in 76 CR 310.				
9.21.77	Record on Appeal certified and delivered to the Court of Appeals by Susan Gretzer.				gp

A TRUE COPY
ATTEST
DATED 9-21, 1977
LEWIS ORGEL
CLERK
BY
DEPUTY CLERK

A 4

INDICTMENT

76CR 010

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA

- against -

ALFRED FAYER,

Defendant.

- - - - - - - - - - - - - - - - - - x

INDICTMENT

Cr. No.____________
(T. 18, U.S.C., §1623)

THE GRAND JURY CHARGES:

INTRODUCTION

1. On the 19th and 20th day of February, 1975, the criminal case of United States v. Alfred Fayer, criminal number 75 CR 43, was tried before the United States District Court for the Eastern District of New York on an indictment charging the defendant ALFRED FAYER with corruptly endeavoring in February 1972 to influence Edward Goodwin, a witness in a pending grand jury proceeding, to remain silent in connection with the grand jury investigation in violation of Title 18, United States Code, Section 1503.

2. It was material to the aforesaid trial to determine among other matters:

   a. Whether or not in February 1972 Alfred Fayer had endeavored to influence Edward Goodwin not to testify voluntarily before the grand jury;

   b. Whether or not in February 1972 Alfred Fayer had so acted with a corrupt motive or intent; and

c. Whether or not in February 1972 Alfred Fayer, an attorney, discussed with the witness Goodwin and Fayer's clients, Harry and Rose Bernstein, accusations or allegations that Harry and Rose Bernstein had paid bribes to Goodwin.

COUNT ONE

1. On the 20th day of February, 1975, within the Eastern District of New York, the defendant ALFRED FAYER, while under oath as a witness in the aforesaid trial before the United States District Court for the Eastern District of New York, did knowingly make false material declarations as follows:

> Q Mr. Fayer, I refer you to page 27 of the transcript, top of the page, the second statement you made [to Goodwin]: "This is the thing. Now, the answer is here, what do you gain? And that's the real, that the real $64,000 question. What do you gain? You can only lose. You can't gain."
>
> Is that the advice that you gave to Goodwin concerning his testifying and cooperating with the Government, Mr. Fayer?
>
> A Not insofar as his testifying. Insofar as his answering any questions with the FBI, the FBI, it's my understanding they're not empowered to make any deal or negotiate with him. He had nothing to gain by saying a word to the FBI.
>
> . . .
>
> THE COURT: Now, at the bottom of the page then, you say, "Somebody, this is why I am here tonight."
>
> There that night to prevent Goodwin from talking?

> THE WITNESS: No, sir. Goodwin had said that he was considering cooperating and this is what I was told. And my advice to him would have been not cooperate at the FBI level. That's why my feeling was he asked for the advice and that's why I was there that night. That's why I told him if he does, he is going to have the beginnings of a case.

2. The aforesaid declarations were false, as the defendant ALFRED FAYER then and there well knew and believed, in that the said Alfred Fayer was at the February 1972 conversation to, and did, endeavor to influence the witness Goodwin not to testify voluntarily before the grand jury. (Title 18, United States Code, Section 1623.)

COUNT TWO

1. On the 20th day of February, 1975, within the Eastern District of New York, the defendant ALFRED FAYER, while under oath as a witness in the aforesaid trial before the United States District Court for the Eastern District of New York, did knowingly make false material declarations as follows:

> THE COURT: Then you say, "I tell you this and I can assure this. That these two [Harry and Rose Bernstein], as far as anything is concerned, will not talk."
>
> Now, in the context, didn't mean with respect to accusations that the Bernsteins were paying Goodwin?
>
> THE WITNESS: No, I don't think so.
>
> . . .
>
> THE COURT: Weren't they talking on page, 88 and 89, about accusations or possible accusations that the Bernsteins were paying to Goodwin?

> THE WITNESS: No, your Honor. I don't see that context.
>
> THE COURT: When Harry Bernstein says at the bottom of 89, "We don't know what you are talking about." He may mean [Rose] and Harry Bernstein and by "you are" mean Goodwin.
>
> THE WITNESS: I don't think so, your Honor.

. . .

2. The aforesaid declarations were false, as the defendant ALFRED FAYER then and there well knew and believed, in that the said Alfred Fayer and the other parties to the February 1972 conversation were discussing accusations and allegations that Harry and Rose Bernstein had paid bribes to Goodwin. (Title 18, United States Code, Section 1623.)

COUNT THREE

1. On the 20th day of February, 1975, within the Eastern District of New York, the defendant ALFRED FAYER, while under oath as a witness in the aforesaid trial before the United States District Court for the Eastern District of New York, did knowingly make false material declarations as follows:

> Q Page 68 of the transcript, Mr. Fayer, down at the bottom of the page where Harry Bernstein states:
>
> "If you say anything, it blows everything."
>
> Were you present when that statement was made, Mr. Fayer?
>
> A I really don't know. I think so but I don't remember. I'm going back -- I don't remember having left. I would assume I was present.

Q Right above, where Mr. Bernstein says, "I am working behind the scenes," throughout this conversation, Mr. Fayer, throughout those statements made by Mr. Bernstein, what did you believe it to be referred to?

A It to be referred to? One of the questions was as to how far the Grand Jury had been progressing with Eastern and naturally Harry Bernstein was speaking to everyone of the lawyers involved to find out what they knew, if anything. He was definitely working on that.

As far as, "If you say anything, it blows everything," if Goodwin says anything he would be finished.

Q Who would be finished?

A Goodwin.

Q So is it your statement that Harry Bernstein was not referring to himself but referring to his respect and concern for Mr. Goodwin?

. . .

Q Was that your understanding of what Mr. Bernstein meant?

A Yes, that was my understanding. The Bernsteins constantly denied giving the man anything.

2. The aforesaid declarations were false, as the defendant ALFRED FAYER then and there well knew and believed, in that the said Alfred Fayer understood that when Harry Bernstein said in the February 1972 conversation that if Goodwin talked it would "blow everything", Bernstein was referring to among others Harry and Rose Bernstein and Eastern Service Corporation. (Title 18, United States Code, Section 1623.)

COUNT FOUR

1. On the 20th day of February, 1975, within the Eastern District of New York, the defendant ALFRED FAYER, while under oath as a witness in the aforesaid trial before the United States District Court for the Eastern District of New York, did knowingly make false material declarations as follows:

> Q Throughout this transcript you make numerous -- in fact on numerous occasions you stated in the transcripts to have his [Goodwins] attorney stay out of the case. Do no investigating; is that right?
>
> A I don't recall no investigating. I certainly felt his attorney had misadvised him and should stay out of the case at that stage. No question about it.
>
> Q Bottom of page 50, starting with Rose Bernstein:
>
> "But tell him not to do any investigation (inaudible).
>
> "Harry Bernstein: Don't do any investigating on his own, don't do anything. Just don't worry.
>
> "Fayer: Please stay out of it. Please.
>
> "Goodwin: Stay out of it.
>
> "Fayer: At the point, the point --
>
> "Rose Bernstein: Tell him not to do any investigating.
>
> "Harry Bernstein: You can tell him it may be dying down.
>
> "Fayer: Right. Yes, but if you are subpoenaed --"
>
> Again, on other pages and this page, Mr. Fayer, there are numerous references to having his [Goodwin's] attorney stop an investigation. What was your purpose

in offering and giving that advice to Mr. Goodwin?

. . .

Q Whom were you addressing this remark to, Mr. Fayer?

A "Please stay out of it" was Rose Bernstein. She had no right to tell him not to do any investigation.

2. The aforesaid declarations were false, as the defendant **ALFRED FAYER** then and there well knew and believed, in that the said Alfred Fayer in the February 1972 conversation was addressing the remark "Please stay out of it" to Goodwin to tell his attorney that the attorney should stay out of any investigation, and was not addressing the remark to Rose Bernstein. (Title 18, United States Code, Section 1623.)

A TRUE BILL.

Anna Kelman
FOREMAN.

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

presence of the jury.)

THE COURT: Good morning, ladies and gentlemen.

I know there was some traffic problems on the Brooklyn-Queens Expressway and some of you may have been ensnagged in the traffic tie-up. But we are ready to start now.

I am going to foreworn you that I have another jury deliberating in the other courtroom and I may have to suspend on what may be an inappropriate time here to attend to that.

With that I think we are ready for the openings.

MR. DePETRIS: Yes, your Honor.

THE COURT: Please.

(Mr. DePetris makes an opening statement to the jury on behalf of the United States of America as follows:)

MR. DePETRIS: May it please the Court, Mr. Korshin, Madam Forelady and ladies and gentlemen of the jury:

My name is Ronald DePetris and I am the Chief of the Criminal Division for the United States Attorney's Office for this District.

It is my responsibility to present this case to you on behalf of the United States Government.

I am now going to give you what is called an opening statement, the purpose of which is to give you an outline or sketch of what the Government intends to prove in this case.

What I say to you now is not evidence. Evidence will come from the witness stand during the trial. Rather, the purpose now is to give you a brief guideline or overall view of the case so you can follow it more easily as it develops from the witness stand.

The defendant in this case is Alfred Fayer, an attorney. And the indictment, which by the way, also is not evidence in the case, consists of four counts. Each count charges that the defendant Alfred Fayer did knowingly make false material declarations while under oath as a witness in a trial before a Federal Judge of this court.

I will now read from Paragraph 1 of the indictment, which is an introductory paragraph.

"On the 19th and 20th day of February, 1975, the criminal case of United States v. Alfred Fayer, criminal number 75 CR 43, was tried before the United States District Court for the Eastern District of New York on an indictment charging the defendant Alfred Fayer with corruptly endeavoring in February 1972 to influence Edward Goodwin, a witness in a pending Grand Jury proceeding, to remain silent in connection with the Grand Jury investigation in violation of Title 18, United States Code, Section 1503."

That's the prior case. The essence of this indictment is that the defendant Fayer committed perjury when he testified at his defense at that trial.

You are not concerned here with his guilt or innocence on his prior charge. You are concerned here solely with his guilt or innocence on charges of perjury.

Now, before I read to you the four counts of the indictment, it might be helpful to identify some of the names that are going to be involved in this trial.

Harry and Rose Bernstein, the evidence will show, were principals of Eastern Service Corporation, a lending institution on Long Island, which made mortgage loans to various home buyers and applied to the FHA for insurance of those mortgage loans.

Mr. Fayer was an attorney for Eastern Service Corporation.

Edward Goodwin was an FHA appraiser. He did appraisals by FHA on applications submitted by Eastern Service Corporation and others. And the evidence will show he received bribes from the Bernsteins and that he was a witness in a Grand Jury investigation into that matter.

With that background I will now read to you count one of the indictment. In that count the Grand Jury of this court charges,

"On the 20th day of February, 1975, within the Eastern District of New York, the defendant Alfred Fayer, while under oath as a witness in the aforesaid trial before the United States District Court for the Eastern District of New York, did knowingly make false material declarations as follows: 'Question: Mr. Fayer, I refer you to Page 27 of the transcript, top of the page, the second statement you made (to Goodwin): 'This is the thing. Now, the answer is here, what do you gain? And that's the real, that's the real $64,000 question. What do you gain? You can only lose. You can't gain.'

'Is that the advice that you gave to Goodwin concerning his testifying and cooperating with the Government, Mr. Fayer?

'Answer: Not insofar as his testifying. Insofar as his answering any questions with the FBI, the FBI, it's my understanding they're not empowered to make any deal or negotiate with him. He had nothing to gain by saying a word to the FBI.'"

And then in a later portion of the transcript, "THE COURT: Now, at the bottom of the page then, you say, 'Somebody, this is why I am here tonight.'

'There that night to prevent Goodwin from talking?

'THE WITNESS: No, sir. Goodwin had said that he was considering cooperating and this is what I was told. And my advice to him would have been not to cooperate at the FBI level. That's why my feeling was he asked for the advice and that's why I was there that night. That's why I told him if he does, he is going to have the beginnings of a case.'"

And reading from Paragraph 2 of count one,

"The aforesaid declarations were false, as the defendant Alfred Fayer then and there well knew and believed, in that the same Alfred Fayer was at the February 1972 conversation to, and did, endeavor to influence the witness Goodwin not to testify voluntarily before the Grand Jury."

That's the allegations of count one of the indictment.

The essence of the charge being that the defendant Fayer lied when he testified that he did not endeavor to influence Goodwin not to testify voluntarily before the Grand Jury.

Now I realize now that you may not be able to follow all this testimony. But you will see the significance of this later as I discuss what the evidence will show and as you hear the evidence during the trial when you try to keep in mind the essence of the charge.

Now, with respect to count two again from the testimony of the trial of February 20th, 1975,

"THE COURT: Then you say, 'I tell you this and I can assure this. That these two (Harry and Rose Bernstein), as far as anything is concerned, will not talk.'

"Now, in the context, didn't mean with respect to accusations that the Bernsteins were paying Goodwin?

"THE WITNESS: No, I don't think so."

In a later portion of the transcript,

"THE COURT: Weren't they talking on Page 88 and 89 about accusations or possible accusations that the Bernsteins were paying to Goodwin?

"THE WITNESS: No, your Honor. I don't see that context.

"THE COURT: When Harry Bernstein says at the bottom of 89, 'We don't know what you are talking about.' He may mean Rose and Harry Bernstein and by 'you are' meaning Goodwin.

"THE WITNESS: I don't think so, your Honor."

And Paragraph 2 of count two,

"The aforesaid declarations were false, as the defendant Alfred Fayer then and there well knew and believed, in that the said Alfred Fayer and the other parties to the February 1972 conversation were discussing accusations and allegations that Harry and Rose Bernstein had paid bribes to Goodwin."

That's the end of count two of the indictment.

Again, the essence of that charge, try to keep it in mind, is that the defendant Fayer lied when he testified he had not been discussing accusations and allegations that the Bernsteins had paid bribes to Goodwin.

Count three of the indictment, the testimony referred to in that count,

"QUESTION: Page 68 of the transcript, Mr. Fayer, down at the bottom of the page where Harry Bernstein states: 'If you say anything, it blows everything.'

"Were you present when that statement was made, Mr. Fayer?

"ANSWER: I really don't know. I think so but I don't remember. I'm going back--I don't remember having left. I would assume I was present.

"QUESTION: Right above, where Mr. Bernstein says, 'I am working behind the scenes,' throughout his conversation, Mr. Fayer, throughout those statements made by Mr. Bernstein, what did you believe it to be referred to?

"ANSWER: It to be referred to? One of the questions was as to how far the Grand Jury had been progressing with Eastern and naturally Harry Bernstein was speaking to every one of the lawyers involved to find out what they knew, if anything. He was definitely working on that.

"As far as, 'If you say anything, it blows everything,' if Goodwin says anything he would be finished.

"QUESTION: Who would be finished?

"ANSWER: Goodwin.

"QUESTION: So is it your statement that Harry Bernstein was not referring to himself but referring to his respect and concern for Mr. Goodwin?"

"QUESTION: Was that your understanding of what Mr. Bernstein meant?

"ANSWER: Yes, that was my understanding. The Bernsteins constantly denied giving the man anything."

And reading from Paragraph 2 of that count,

"The aforesaid declarations were false, as the defendant Alfred Fayer then and there well knew and believed, in that the said Alfred Fayer understood that when Harry Bernstein said in the February 1972 conversation that if Goodwin talked it would 'Blow everything', Bernstein was referring to among others Harry and Rose Bernstein and Eastern Service Corporation."

End of count three of the indictment.

Again, the essence of that charge is that the defendant Fayer lied when he testified that he understood Harry Bernstein to be referring to Goodwin and not Bernstein when Bernstein said to Goodwin, "If you say anything it blows everything."

Finally, count four of the indictment, testimony in that count:

"QUESTION: Throughout this transcript you make numerous--in fact, on numerous occasions you stated in the transcripts to have his (Goodwin's) attorney stay out of the case, do no investigating; is that right?

"ANSWER: I don't recall no investigating. I certainly felt his attorney had misadvised him and should stay out of the case at that stage. No question about it.

"QUESTION: Bottom of Page 50, starting with Rose Bernstein:

"'But tell him not to do any investigation (inaudible).

"'Harry Bernstein: Don't do any investigating on his own, don't do anything. Just don't worry.

"'Fayer: Please stay out of it. Please.

"'Goodwin: Stay out of it.

"'Fayer: At the point, the point--

"'Rose Bernstein: Tell him not to do any investigating.

"'Harry Bernstein: You can tell him it may be dying down.

"'Fayer: Right. Yes, but if you are subpoenaed--'

"Again, on other pages and this page, Mr. Fayer, there are numerous references to having his (Goodwin's) attorney stop an investigation. What was your purpose in offering and giving that advice to Mr. Goodwin?"

"QUESTION: Whom were you addressing this remark to, Mr. Fayer?

"ANSWER: 'Please stay out of it' was Rose Bernstein. She had no right to tell him not to do any investigation."

And then Paragraph 2 of that count, the Grand Jury charges, "The aforesaid declarations were false, as the defendant Alfred Fayer then and there well knew and believed, in that the said Alfred Fayer in the February 1972 conversation was addressing the remark 'Please stay out of it' to Goodwin to tell his attorney that the attorney should stay out of any investigtion, and was not addresssing the remark to Rose Bernstein."

End of count four.

And the essence of that charge is that the defendant Fayer lied when he testified when he was addressing and remarked please stay out of it to Rose Bernstein and not to Goodwin to tell his attorney to stay out of the case.

And again I understand you are not able to follow all of this now. It's all new to you. But you will be seeing the significance later as you see and hear the case. Just try to keep in your mind the essence of the charge.

Now, the evidence in this case which will begin shortly will take a relatively short time to present to you. However, it is an important case for the defendant and the Government. It is important to the defendant because he is an attorney charged with a serious crime. And it is important to the Government because perjury goes to the very heart, to the integrity of the administration of justice in this country.

Now, what will the evidence in this case show? Let's discuss that.

The evidence will show that in 1971 and 1972 a Federal Grand Jury in the Eastern District of New York was conducting an investigation into fraud and bribery in the real estate industry regarding FHA programs and its insured mortgages. And as I mentioned before, Eastern Service Institution was a lending institution and did business with FHA, lent money to homebuyers and applied to the FHA for insurance on the mortgages and this application to the FHA involved a two step process.

First the appraisal operation. The application is made and an appraiser, like Mr. Goodwin, goes out and appraises the house and puts a value on it.

The second step is the credit application.

Various credit applications and investigations are made to show the mortgagor can afford to make the payments.

Now, Edward Goodwin was appointed as an appraiser by the FHA.

The evidence will show the years 1967 through 1971 Goodwin received extensive bribes from Harry Bernstein and his wife Rose Bernstein.

Eastern Service and the Bernsteins were the subjects of a Grand Jury investigation looking into fraud and bribery in 1972.

The evidence will show in the fall and winter of 1971 a number of officials and employees of Eastern Service Corporation, including the Bernsteins were subpoenaed to appear before the Grand Jury and they invoked their Fifth Amendment privilege before the Grand Jury.

The evidence will further show that in January 1972 the appraiser Goodwin reached an agreement with the Government. He would plead guilty to one count of the conspiracy and cooperate with the Government in its investigation.

Thereafter Goodwin met with Harry and Rose Bernstein to discuss the Grand Jury investigation.

The Bernsteins quite obviously did not know that Goodwin was cooperating with the Government.

And they made various efforts to convince him not to cooperate with the Government and not to testify before the Grand Jury.

[illegible] evidence will show that on February 8th, 1972, [illegible]win met with the Bernsteins and stated to them that he had discussed this matter with his, Goodwin's, attorney, who raised the possibility of his cooperating with the Government.

Naturally, this upset the Bernsteins. They urgently advised Goodwin not to cooperate and not to talk and to exercise his Fifth Amendment privilege when subpoenaed before the Grand Jury.

Further, they advised him not to discuss with his own attorney his involvement with the Bernsteins. They told him that they would supply him with a good criminal attorney as they had done with other people previously subpoenaed before the Grand Jury. That's February 8th, 1972.

The Bernsteins were still concerned that Goodwin might cooperate with the Government and testify as to the bribes he received from the Bernsteins. And they met again with Goodwin on the next day, February 9, 1972, and proceeded to a restaurant in West Hempstead, New York.

Also present on that February 9th, 1972, meeting was the defendant Alfred Fayer.

Fayer, who had known the Bernsteins for approximately thirty years considered himself to be a close personal friend of the Bernsteins.

Further evidence will show he was that closing attorney and did legal work for Eastern Service Corporation.

The proof will show Mr. Fayer had been keeping his finger on the pulse of the Government's investigation for the benefit of Eastern Service. Fayer had obtained counsel for various Eastern Service employees who had been subpoenaed before the Grand Jury. He advised these employees to sit tight and not talk in connection with the Grand Jury investigation and to refuse to testify. And he had in fact directed Eastern Service response to the Grand Jury--

MR. KORSHIN: I always hesitate to interrupt an opening, but I must object to these statements. They are completely irrelevant to the charge here and they are highly prejudicial.

THE COURT: No, I disagree. I think the Government may say what Mr. DePetris says it will show.

You have an exception.

MR. DePETRIS: Thus the evidence will show that Bernstein advised Fayer of their meeting on February 8th, 1972, with Goodwin. And as a result Mr. Fayer attended the meeting on February 9, 1972, with Goodwin.

The evidence will show that the Bernsteins and Fayer were all concerned if Goodwin would talk, then the prosecutor would have the beginnings of a case which would undermine the tactic of everyone refusing to talk.

A lengthy conversation took place at the restaurant on February 9, 1972, between Fayer, Goodwin and the Bernsteins.

You will hear this conversation during the course of the trial, for Mr. Goodwin was equipped with a recording device at that meeting.

So you, the jury, will be able to hear the exact words which were said at that meeting. It will not be a question of one person's word against another as to what was said.

The evidence will show when you listen to that tape that throughout this lengthy conversation the defendant Fayer endeavored to influence Goodwin not to talk, not to talk to the FBI, the United States Attorney, not to testify voluntarily before the Grand Jury; to do nothing. And if he was subpoenaed, they would get him an attorney.

Mr. Fayer told Goodwin how several Eastern Service Corporation employees had helped thwart the ongoing investigation by invoking their Fifth Amendment privilege and otherwise not talking.

He tried to influence Goodwin to follow a similar tactic, not to talk and not to testify before the Grand Jury.

The evidence will show that Fayer indicated to Goodwin that he had a broad knowledge of the ongoing investigation and that the Government didn't have a case.

Fayer constantly emphasized to Goodwin the weakness of the Government's investigation in an effort to convince him not to talk.

The evidence will show that Fayer argued to Goodwin that since no one else was talking, only Goodwin could hurt himself. He assured Goodwin that the Bernsteins would not talk.

On the other hand, he told Goodwin that if he did talk he would lose his job, he would face criminal liability in connection with the bribes he received and would face liability to the IRS for not reporting the bribe money.

The evidence will show that not once did Fayer tell Goodwin that there are any benefits in cooperating with the Government and testify voluntarily before the jury. Instead the evidence will show that Mr. Fayer spent the entire evening assuring Goodwin nothing would happen if he remained silent and he would only hurt himself if he went voluntarily before the Grand Jury.

In fact, Mr. Fayer even warned Goodwin if he accused the Bernsteins of any wrongdoing, they would deny it.

The proof would further show that Goodwin had advised the Bernsteins and Fayer that his attorney said to cooperate with the Government was a possible alternative for them to use. And the evidence will show that Fayer repeatedly attacked Goodwin's attorney for being unqualified and giving improper advice. And Fayer also told Goodwin to drop his attorney and tell his attorney not to do any investigation or cooperation in the matter.

And on February 13th, 1972, the Bernsteins offered Goodwin an inducement to refuse to testify before the Grand Jury. They told Goodwin if he lost his job with the FHA as a result of refusing to testify, they would give him a job in their Florida office. The Bernsteins also offered to give Goodwin an attorney and that Goodwin wouldn't have to pay for the attorney's fees.

The evidence will show that Fayer was present when the Bernsteins made these inducements to Goodwin and he acquiesced with them.

The evidence will show in February of 1975 the defendant was brought to a trial before this Court. And Fayer took the stand in his defense of that trial and testified to a number of matters including the testimony in the trial read today to you, and which is alleged by this indictment to be false.

Again, briefly with respect to count one, Fayer testified in substance that he did not endeavor to influence Goodwin not to testify voluntarily before the Grand Jury. It is that his advice only related to the FBI.

The evidence will show that that testimony was false.

Again, with respect to count two, Mr. Fayer testified in substance that he had not been discussing allegations and accusations that the Bernsteins had paid bribes to Goodwin.

The evidence from the tapes will show that that testimony was false.

Count three, Fayer testified in substance that he understood Harry Bernstein to be referring to Goodwin and not to Bernstein when Bernstein said to Goodwin, if you say anything it blows everything.

The evidence will show that that testimony was false.

In count four Mr. Fayer was testifying in substance that he said, please stay out of it, to Rose Bernstein, and not to Goodwin, to tell them to stay out of the case with his attorney.

The evidence will show that that testimony was false.

Now, in outline form, that is the proof

by the United States Government in this case.

The Government's case will be subjected, I am sure, to vigorous attack by defense counsel. And this is as it should be. Because in the end it will be your duty to determine whether the Government has proven the defendant Fayer guilty of perjury beyond a reasonable doubt.

I know that you will perform this duty fairly and impartially.

I invite you to carefully scrutinize the evidence and the tapes in this case, as I know you will. All I ask at this time is that you listen carefully to the evidence and judge the defendant's actions and his testimony in the prior trial on the basis of your own good common sense and everyday experience.

Thank you.

THE COURT: We will take a recess for ten or fifteen minutes at this point.

And after this recess I will be able to give my full attention to this trial.

(The jury leaves the courtroom.)

(A recess is taken.)

(The jury enters the courtroom and the

THE CLERK: So marked as Government's Exhibit 1 in evidence.

MR. DePETRIS: With your Honor's permission, I will read it to the jury.

"In 1971 and 1972 a Federal Grand Jury in the Eastern District of New York was conducting an investigation into fraud and bribery into the real estate industry regarding FHA programs and insured mortgages.

"In the fall and winter of 1971 a number of officials and employees of Eastern Service Corporation were subpoenaed to appear before the Grand Jury. These employees invoked their Fifth Amendment privilege before the Grand Jury as follows:"

And I have the names and the dates.

Harry Bernstein on October 29, 1971.

Rose Bernstein on October 29, 1971.

Florence Behar on October 29, 1971.

Frank Fey on December 1, 1971.

William Roy Schiller on February 3, 1972.

And Patricia Buckley.

And this is the stipulation that is now in evidence.

THE COURT: All right.

MR. DePETRIS: Secondly, we have a stipulation regarding the obstruction of justice trial, the prior trial.

MR. KORSHIN: What was that?

(Mr. DePetris and Mr. Korshin confer with each other out of the hearing of the court reporter.)

MR. DePETRIS: The stipulation is as follows:

On the 19th and 20th day of February, 1975, the criminal case of United States v. Alfred Fayer, criminal number 75 CR 43, was tried before the United States District Court for the Eastern District of New York. And the indictment number 75 CR 43, a copy of the indictment here, your Honor, which I will offer in evidence.

MR. KORSHIN: No objection.

THE COURT: Let it be marked.

THE CLERK: So marked as Government's Exhibit 2 in evidence.

MR. DePETRIS: And if I may just read that indictment to the jury, your Honor.

THE COURT: Yes.

MR. DePETRIS: "The Grand Jury charges:

"On or about and between the 9th day of February, 1972, and the 12th day of February, 1972, within the Eastern District of New York, the defendant Alfred Fayer corruptly did endeavor to influence Edward Goodwin, a witness in a case then pending before a Grand Jury in the United States District Court for the Eastern District of New York, and to discharge his duty as a witness, in that the said Alfred Fayer corruptly urged and advised Edward Goodwin to remain silent in connection with the Grand Jury investigation and to invoke the Fifth Amendment before said Grand Jury."

And thirdly, your Honor, we have a stipulation that Mr. Fayer's testimony as set forth in the false declaration counts of the present indictment, 76 CR 310, is a true and accurate transcription of that portion of his trial testimony given under oath on February 20th, 1975, both sides reserve the right to offer into evidence other portions of the trial transcript if relevant.

THE COURT: All right.

MR. DePETRIS: I have already read this testimony to the jury in the opening. And rather than read it now, I offer that in evidence.

THE COURT: Yes. No other confession or admission made thereby.

MR. DePETRIS: Finally, your Honor, before I call the first witness, may we have just a short side bar?

THE COURT: All right. You know I usually excuse the jury for side bars, but I will extend a special privilege for both of you and Mr. Korshin.

MR. DePETRIS: This will be very brief, your Honor.

(The following takes place at side bar and out of the hearing of the jury.)

MR. DePETRIS: We also have a stipulation as to the authenticity and accuracy of the transcript of the trial, which are Pages A179 and A319 of the appendix of the record on appeal. And we make the stipulation now so the Court may review that transcript and it will be the Court's duty to determine the issue of materiality.

THE COURT: Yes.

And only the testimony of Fayer, or do you want me to review the entire trial?

MR. DePETRIS: The entire trial, your Honor, for the issue of materiality.

have made the stipulation won't bar you from coming in and saying, "Oh, I didn't know that it was there."

MR. DePETRIS: Fine.

(The following takes place in open court and in the presence of the jury.)

MR. DePETRIS: Your Honor, the Government calls Edward Goodwin as their first witness.

With your Honor's permission, I would move the lectern.

THE COURT: Yes, please do.

EDWARD J. GOODWIN, called as a witness by the Government, having been first duly sworn by the clerk of the court, was examined and testified as follows:

THE CLERK: Would you state your name please, and spell it for the record.

THE WITNESS: Edward J. Goodwin, G-o-o-d-w-i-n.

THE CLERK: Be seated, please.

DIRECT EXAMINATION

BY MR. DePETRIS:

Q Mr. Goodwin, by whom are you employed?

A Presently employed by Optica Manufacturing Corp.

(phonetic spelling) and AYO Company Inc. They are two names, and it's the one company in North Bayshore.

THE COURT: Incidentally, that microphone is not on, so you can turn it down. If I find you speak in a low voice, I will have it turned on. But I don't use it.

THE WITNESS: Thank you, your Honor.

BY MR. DePETRIS:

Q Please try to keep your voice up, Mr. Goodwin, so the jurors in the back can hear you.

A Yes, sir.

Q Directing your attention to the years 1964 through 1971, can you tell the jury where you were employed at that time?

A Yes, sir. I was employed in the Federal Housing Administration, Hempstead Insuring Office at 175 Fulton Avenue in Hempstead.

Q Is that out on Long Island?

A Yes, sir.

Q In what capacity were you employed there?

A Staff appraiser.

Q Would you briefly explain to the jury what the Federal Housing Administration is.

A Yes, sir.

The Federal Housing Administration is the Government Insuring Agency which insures loans for the purchase of residential houses, in other words, homes for people who ordinarily could not make a large down payment for a house. They guarantee to the lending institution, in other words, to the bank, that the house is worth the money and that the purchaser can afford to meet the mortgage payments.

Q And the purchaser is the mortgagor; is that correct?

A Yes, sir.

Q And the lending institution is the mortgagee?

A Yes, sir. The bank would be the mortgagee.

Q And the lending institution is the institution which applies to the FHA for insurance, is that correct, mortgage insurance; is that correct?

A Yes. Application is made by the bank or the lending institution to the Federal Housing Administratic for their insurance or guarantee.

Q And would you describe to the jury briefly the two basic steps that are involved in an application for mortgage insurance.

A Well, the first step applies to the real estate, the house. The lending institution or bank would make application to the Federal Housing Administration for what is known as a conditional commitment.

And the Federal Housing Administration would appraise the property and establish what they felt was a fair market value on the property, whether or not it was acceptable, what repairs, if any, were needed to make the property acceptable.

Once that commitment had been made, there would come the second step in which--

Q Excuse me, Mr. Goodwin. That first step involves the appraisal application?

A Yes, sir.

Q And what is the second step?

A The second step involves the review of the prospective purchaser's credit to make sure that he could indeed make the payments and that he was well motivated to buy the property.

Q And a firm commitment is issued with respect to mortgage insurance; is that correct?

A Yes, sir. After you have an acceptable property and an acceptable purchaser.

Q Could you describe to the jury briefly your duties as an appraiser with the FHA?

A Yes.

As an appraiser I would receive cases at random within the area that the Hempstead Insuring Office would cover; make appointments; go out and inspect the property; see if it was acceptable or not acceptable; establish the market value of the property; and as a senior appraiser issue from the field of additional commitment, in other words, accepting the property for insurance; to set forth the necessary repairs, if there are any, and the conditional commitment would be sent out to the lending institution.

THE COURT: Of course, it's the bank that lends the money to the purchaser.

THE WITNESS: Yes, sir.

THE COURT: Right?

THE WITNESS: Yes, sir.

THE COURT: And it's the FHA that insures the loan to the bank?

THE WITNESS: Yes, sir.

THE COURT: So if there is a default, the bank can call on the Government Agency?

THE WITNESS: Yes, sir.

THE COURT: Is that true?

THE WITNESS: That's true.

THE COURT: All right.

BY MR. DePETRIS:

Q And that's to encourage the bank or lending institution to make loans to low income purchasers; is that correct?

A Yes, sir.

Q And could you estimate the approximate number of appraisals that were conducted while you were an FHA appraiser?

A Several thousand.

Q Did you have occasion to perform appraisals for Eastern Service Corporation?

A I had occasions to make appraisals wherein Eastern Service Corporation was the applicant; yes, sir.

Q And would you tell the jury who or what Eastern Service Corporation was.

A Yes.

Eastern Service Corporation was a lending institution which was recognized by the FHA to have the authority to close loans as though they were a bank. Some of the loans they would keep themselves; others they would sell subsequently to banks, other savings banks.

Q And was Eastern Service Corporation one of the largest lending institutions involved in the FHA industry?

A Yes sir.

Q And who is the president of Eastern Service Corporation?

A Harry Bernstein.

THE COURT: When you talk about FHA, you're talking only about the insurance on one family house loans, aren't you?

THE WITNESS: One to four, sir.

THE COURT: One to four?

THE WITNESS: Yes, sir.

BY MR. DePETRIS:

Q Where was the FHA office located?

A At 175 Hempstead Avenue--175 Fulton Avenue in Hempstead.

Q And that office had jurisdiction over what?

A All of Long Island, Westchester County, Rockland County, the general geographic area around this area.

Q And where are most of the appraisals you performed located, the houses?

A They were all over; a good portion of them were in Brooklyn.

Q You testified that Harry Bernstein was the president of Eastern Service Corporation.

A Yes, sir.

Q Did you also know who Rose Bernstein was?

A Yes sir.

Q Who was she?

A Rose Bernstein was the wife of Harry Bernstein. And as a broker she dealt with Eastern Service Corporation and through Eastern Service Corporation with the FHA.

Q Now, directing your attention to approximately March of 1967, did you have an occasion to meet with the Bernsteins on or about that time?

A Yes.

Q And where did this meeting take place?

A In Harry Bernstein's office at Eastern Service Corporation.

Q And had you ever been in Mr. Bernstein's office before?

A Not in his office, no.

Q Had you ever met him before?

A Yes, sir; on several occasions.

Q Approximately how long had you known him at that time?

A I would say at least five years.

Q And who was present at this meeting in Mr. Bernstein's office?

A Mr. Bernstein and Rose Bernstein, who was known to me as Rose Surenstein.

Q Did you have a conversation with the Bernsteins at that time?

A Yes.

Q And would you tell the jury what was said to you and what you said to them at that time?

MR. KORSHIN: I object, if the Court pleases. The defendant was not there. And as to the defendant, this would be hearsay, your Honor.

THE COURT: The jury may be excused.

(The jury leaves the courtroom and the following takes place out of the presence of the jury.)

THE COURT: I will take an offer of proof first.

MR. DePETRIS: Yes, your Honor.

I intend, your Honor, to go in very briefly to the relationship between the Bernsteins and Mr. Goodwin, which is relevant to the jury's understanding of the conversation which took place in

February of 1972. I will establish that this meeting in March of 1967 is the time the Bernsteins made the first offer of bribery relationships. At that time they offered to pay him $50 for any appraisals he conducted in which they had an interest.

And then I will establish, again very briefly, during the years 1967 to 1971 he conducted a number of appraisals for the Bernsteins, met with them in their office, and was paid $50 per appraisal and received approximately $1,500 all told during those years.

And then I will lead up to the conversations leading up to the conversations on February 8 and 9, 1972.

THE COURT: I know that's what you intend to do. But under what theory can you offer the conversations between the witness and the Bernsteins in this trial? How is the defendant bound by it?

MR. DePETRIS: The defendant is not bound by it in the sense that he was part of or a participant in the relationship. The evidence is offered solely as background evidence so that the jury can understand when they hear the conversations on

February 8th or 9th in 1972, what the relationships were between the Bernsteins and Goodwin. It's offered solely to show the motive and intent of Bernstein under those conversations.

In United States of America v. Cioffi, a 2d Circuit case, which was referred to in the briefs that your Honor read last night, the Court admitted this testimony on this very basis, as background--instructed the jury that the testimony was not offered as binding upon the defendant in that case because he, as similar to Mr. Fayer, was not involved in the criminal activity. He came in like Mr. Fayer, at a later point in time.

THE COURT: It's really to show a history of bribery which does relate to the conversations had in February of 1972.

MR. DePETRIS: Yes, your Honor. And I would have no objection if your Honor instructs the jury of the limited purpose of that offer and that it's not binding on Mr.Fayer, and that he was not present.

THE COURT: Yes.

Even though it's informed hearsay, what it really is is proof that payments were made prior to the conversation.

I will allow it and you have an exception.

MR. KORSHIN: Such proof, if the Court pleases, should not be permitted in the record unless it's followed by proof that Mr. Fayer knew of this.

THE COURT: I think that's the Government's contention, and I can always charge the jury that it's subject to that connecting evidence.

MR. KORSHIN: Yes.

THE COURT: But more importantly, I think it does explain what the parties were talking about if the Government's theory is correct.

MR. KORSHIN: I think the jury will hear a lot of testimony about bribes paid by the Bernsteins and I am not in a position to contradict it and neither does Mr. Fayer. And the jury hears it and it blackens Mr. Fayer.

THE COURT: If you're arguing the right of confrontation, here is the witness and you can cross-examine him.

And we are talking about irrelevant testimony coming in?

MR. KORSHIN: Yes.

THE COURT: I think it's relevant to the extent that it explains the testimony of the incident of February 1972.

I will allow it and you have your exception.

(The jury enters the courtroom and the following takes place in open court and in the presence of the jury.)

THE COURT: The Government is about to offer conversations allegedly held between this witness and the Bernsteins in 1967.

The defendant is required only to defend against the charge in the indictment, which is a charge of perjury, as you heard, during the trial of February 19th and 20th of 1975.

And you might ask why I am allowing this testimony to come in.

It comes in for a very limited purpose. First, that it might explain, if you believe the testimony, evidence of taped conversations between the witness and the defendant. Further, if the defendant knew of the relationship between this witness and the Bernsteins, it might fairly relate to the issues in this case and the discussions they had in February of 1972.

That is what we call connecting evidence, connecting the defendant up with these conversations; and if not the conversations in particular, the course of conduct between this witness and the Bernsteins.

So I am allowing it for that limited purpose.

And, of course, if the connecting evidence is not offered, then the defendant has leave to move to strike it with the appropriate instruction at that time.

BY MR. DePETRIS:

Q We are at this point of time in a meeting in Mr. Bernstein's office in March of 1967.

Can you tell the jury what was said at that time between you and the Bernsteins.

A In the course of the conversation with Mr. Bernstein and Rose Surenstein, Mr. Bernstein told me I was going to be sent into Brooklyn to make appraisals, and that I would from time to time receive as assignments appraisals on properties, as he said, he was interested in; that he wanted top dollar on his appraisals, and repairs were to be held down. And for every case that I received that was one of his, that he would pay me $50.

I told him at that time it wasn't necessary, that he would get a good, fair, honest count.

And Rose Surenstein said, "Don't be foolish. Take the money. Sock it away. It's better off in your pocket."

Q Now, after that meeting with the Bernsteins in March of 1967 did you have occasion again to meet with the Bernsteins in the office of Eastern Service Corporation?

A Yes sir.

Q Approximately how many occasions did you meet with them during the next few years at their office?

A Sometimes weekly and sometimes every several weeks.

Q Approximately what time of the day would you meet with him?

A It was usually on a Friday after the close of business.

Q Would you please tell the jury what happened on those subsequent meetings as Mr. Bernstein's office.

A Excuse me, can I have a drink of water?

(Whereupon there was a pause in the proceedings and the witness received a glass of water.)

THE WITNESS: Thank you.

A (Continued) At the time I met with Harry Bernstein and Rose Surenstein I would review the appraisals I had made on their properties, what value had been given to them, what repairs had been imposed, if any. And Harry would go down the list with me, together with Rose, and they would pay me on the basis of $50 a case.

THE COURT: By their properties you mean that they had title to the property?

THE WITNESS: I don't know, your Honor, who had title to the property. It was merely told to me that it was property that they were interested in.

BY MR. DePETRIS:

Q And they gave you $50 for each one of those properties. Is that correct?

A Yes sir.

Q And in return for the money from the Bernsteins, what did you do?

A Well, in some cases I accepted properties which could have been rejected. Thy received higher value than they should have received, left off repairs, and in some cases just minimized repairs.

Q And approximately how long did this

relationship of bribery payments last?

A 1967 through 1971.

Q And during those years approximately how much money did you receive all together from the Bernsteins?

A Approximately $15,000.

Q During 1971 did you become aware that there was a federal investigation being conducted into the FHA area?

A Yes sir.

Q And did you have occasion to meet with the Bernsteins at that time?

A Yes.

Q Approximately when was the time that you met with the Bernsteins in regard to the investigation?

A In the middle of December, 1971.

Q And where did that meeting take place?

A It took place in a car a few blocks north of the FHA, north of Hilton Avenue, on Hilton Street in Hempstead.

Q And that was a few blocks from the FHA office?

A Yes. FHA and Eastern Service Corporation, they were both in the same building.

Q The office of the Eastern Service Corporation was in the same building as the FHA office?

A Yes sir.

Q Who initiated this meeting in December of 1971?

A Harry Bernstein.

Q And how did he initiate it?

A I received a call at home and they told me he was having trouble with a leak in a basement. They had just bought or were in the process of buying a house in Kings Point, and they had had some problems with water in the basement and they had asked me to take a look at it; which I did.

And I had made some suggestions to them as to how to eliminate the problem.

Harry Bernstein told me he was having trouble with a leak in the basement and he wanted to see me and talk about it.

Q So this meeting took place in the middle of December in 1971?

A Yes sir.

Q And, again, where did you meet?

A In an automobile on Fulton Street, about two blocks away from the FHA.

Q Did you have a conversation with the Bernsteins at that time?

A Yes, sir.

Q Would you tell the jury what they said to you and what you said to them?

A Yes, sir.

Harry Bernstein told me that they had been before the Grand Jury which was investigating the corruption at the Federal Housing Administration and that they took the Fifth Amendment.

They told me that if I was called before the Grand Jury, that I should take the Fifth Amendment. And that if everybody kept their mouth shut, no one would have a problem and there wouldn't be any further investigation, it would run out of steam.

They paid me $500. They told me they were going away for the holidays and wouldn't be in town. And they wanted to give me a Christmas present and told me just to sit tight and to keep my mouth shut.

Q And after this meeting in the middle of December 1971, what was the next thing that happened in connection with the investigation?

A To my knowledge?

Q Yes.

A It was just after New Years, on the 4th of January, 1972. It was a Tuesday evening around 6:30.

I was visited at my home by two members of the Federal Bureau of Investigation, Agent Hodges and Schneicocki (phonetic spelling).

Q Did you have a conversation with the FBI Agents at that time?

A Yes.

Q Without going into details of the investigation, did it concern the investigation?

A Yes, sir.

Q And did they advise you of your rights at that time?

A Yes, sir.

Q And what did you tell them?

A I told them I didn't want to discuss anything with them until I spoke with my lawyer.

MR. KORSHIN: Objection. If the Court pleases, I think we have had enough background. And all of this in the mind of the jury--

THE COURT: All right.

Strike out, "I told them I didn't want to talk to them."

The jury is to disregard it.

Q Now, after that meeting with the FBI did you have occasion to meet with your attorney?

A Yes, sir; the same night.

Q And who was your attorney?

A Kenneth Rohl.

Q And after your meeting with your attorney, did you have occasion to be with anyone from the United States Attorney's Office?

A Yes, sir.

Q Who was it?

A Mr. Accetta.

Q And he was an Assistant U.S. Attorney; is that correct?

A Yes, sir.

Q And who was present at that meeting?

A Myself, my attorney, Mr. Rohl and Mr. Accetta, in my attorney's office.

Q And approximately when did that meeting take place?

A In the evening on the 14th of January, 1972.

Q And at that time did you enter into an agreement with the Government?

A Yes, sir.

Q And would you tell the jury what that agreement was?

THE COURT: Before you do, would you come to side bar.

(A discussion takes place at side bar out of the hearing of the jury as follows:)

THE COURT: The Government's agreement usually provides that the witness must testify truthfully.

I might send a memo to the U.S. Attorney that I will not permit witnesses to testify that they agreed to tell the truth. I don't know if it's proper that that comes before the jury. You can't support the credibility of a witness by entering into an agreement to tell the truth.

MR. DePETRIS: I wasn't intending to do that, your Honor. I have gone over this with him and he will simply testify that he agreed to cooperate with the Government and to testify in his activities and to plead guilty to one count, and that no promise as to sentence; but the Judge would be advised of his cooperation.

MR. KORSHIN: I object to this.

MR. DePETRIS: If you want, we can excuse the jury and I will instruct him again.

MR. KORSHIN: I object to all of it.

THE COURT: On what ground?

May we?

THE COURT: Yes.

(The following takes place at side bar out of the hearing of the jury.)

MR. DePETRIS: I want to make sure that I don't overstep--that the witness doesn't testify to something--in other words, I will lead the witness.

THE COURT: Yes. I suggest you lead him. That's all right.

MR. KORSHIN: I will not object.

(The following takes place in open court and in the presence of the jury.)

BY MR. DePETRIS:

Q Mr. Goodwin, you were at this meeting in January of 1972 between you, your attorney and the Assistant U.S.Attorney?

A Yes, sir.

Q And you reached an agreement at that meeting; is that correct?

A Yes, sir.

Q And pursuant to that agreement did you agree to cooperate with the Government's investigation and to testify as a witness?

A Yes, sir.

Q And did you agree to plead guilty to one count of conspiracy?

A Yes, sir.

Q And there would be no further prosecution of you; is that correct?

A Yes.

Q And did you understand that the Government would advise the Judge at the time of your sentence of your cooperation?

A Yes, sir.

Q And that no promises were made with respect to the sentence?

A That's true.

Q Did there come a time when you did plead guilty, Mr. Goodwin?

A Yes, sir.

Q And that was to conspiracy?

A Yes, sir.

Q And did you testify at the trial of the Bernsteins and Eastern Service Corporation?

A Yes, sir.

Q And after the trial did there come a time when you were sentenced pursuant to the guilty plea?

A Yes, sir.

Q And do you recall when that was?

A Yes, sir. That was in September of 1944.

Q Of 1974?

A I'm sorry, 1974.

Q And was the Judge advised of your cooperation?

A Yes, sir.

Q And who was the Judge?

A Judge Travia, the same Judge who tried the case.

Q And what sentence was imposed upon you?

A I was fined $5,000, placed on three years probation, and any jail sentence was suspended.

Q Now directing your attention again now to the events of early 1972 after you reached that agreement with the Government.

A Yes, sir.

Q Did you have occasion to meet with the Bernsteins again?

A Yes, sir.

Q And when was the next time you met with them?

A On the first of February, 1972.

Q And had you called them to set up that meeting?

A Yes, sir. I called them from the FBI offices in Babylon the evening before.

Q And then you met with them on February 1, 1972; is that correct?

A Yes, sir.

Q And where did you meet with them?

A Again, in a car on Hilton Street, around the corner from the FHA in Hempstead.

Q And who was present?

A Harry Bernstein, Rose Surenstein and myself.

Q And did you have a conversation at that time?

A Yes, sir.

Q Prior to the meeting had you had occasion to meet with the agents of the FBI?

A Yes, sir, I did.

Q And were you equipped with a recording device at that meeting?

A They equipped me with a body recorder and a transmitter on my body.

Q Could you briefly relate to the jury the substance of that conversation with the Bernsteins.

MR. KORSHIN: I object, if the Court pleases. I think this has gone far enough in the way of background. And it gets worse and worse as it goes along.

THE COURT: I will allow it subject to connection again.

This defendant cannot be chargeable with conversations out of his presence. And I am allowing it only to show the history of the relationship between this witness and the Bernsteins. And it is subject to connection to determine whether this defendant was made aware of the particular conversation.

You may answer.

THE WITNESS: I'm sorry, your Honor. I don't remember the question.

MR. DePETRIS: Would the reporter please read back the last question?

THE COURT: Yes.

(The court reporter reads back the pending question.)

A Yes. I told Harry Bernstein and Rose Surenstein that I had been visited by two members of the Federal Bureau of Investigation, and they had told me they were aware of the corruption of the FHA and of the fact that I had received monies and bribes from

Harry Bernstein and Rose Surenstein.

And Harry Bernstein became upset and he said, "No, wrong, wrong." They became very agitated--

Q What did they say to you after you told them that, Mr. Goodwin.

A "Just keep your mouth shut. Don't say anything to anybody. And if the time comes that you need a lawyer," they would provide a lawyer and they would take care of the expenses. But just to keep my mouth shut. And if anyone asks you any questions, take the Fifth Amendment. If you get called before the Grand Jury, take the Fifth Amendment, and don't have anything further to say to the FBI or the U.S. Attorney's Office; that they are just fishing and they can't prove anything. They have no way of knowing anything. Anything I got from them was in cash.

Q After that meeting on February 1, 1972, did there come a time when you again met with the Bernsteins?

A Yes, sir.

Q When?

A About a week later.

Q Do you recall the date?

A Yes, sir, February 8th.

Q And out of that--who initiated that meeting?

How did it come about?

A I called them to make an appointment to see them.

Q And did you have occasions to meet with them on February 8th, 1972?

A Yes, sir. Again, it was in a car in the same general location on Hilton Street, around the corner from the FHA. And we drove around the neighborhood.

Q And who was present at that meeting?

A Harry Bernstein, Rose Surenstein and myself.

Q And prior to this meeting had you again met with the FBI Agents?

A Yes, sir. And again they had put a recorder on me and a transmitter.

MR. DePETRIS: Your Honor, at this point in time it would be my purpose to play the tape recording of that conversation on February 8th, 1972.

MR. KORSHIN: I object, if your Honor please.

THE COURT: The jury may be excused.

(The jury leaves the courtroom and the following takes place out of the presence of the jury.)

THE COURT: The recorded conversation of the next day, February 9th, is there any proof in the record that the defendant knew of the substance of the conversation the day before?

MR. DePETRIS: On the tape, your Honor, there are indications that the Bernsteins did tell Fayer about the conversation the day before. It would be a question and inferences for the jury to be drawn as to what extent the Bernsteins described the substance of the conversation.

But there is no question that the Bernsteins did tell Fayer that they had a conversation the day before.

THE COURT: Did they discuss the substance of the conversation on the 9th?

MR. KORSHIN: No.

MR. DePETRIS: There are references throughout the transcript on the 9th to things that had been said on the 8th.

MR. KORSHIN: Without any indication that they had been said on the 8th. And there is nothing in the February 9th tape which shows that Mr. Fayer knew or was told of what had been said previously.

THE COURT: This is what I am thinking: This is a lawyer. And conversations on the 9th indicate that he has his pulse on everything.

Can't the jury infer that the Bernsteins told the lawyer everything?

MR. KORSHIN: Oh, no. He said--his testimony was that he knew what was going on in the way of the investigation. But it's a long way, a long inference, a long shot that because he knew and he was keeping his pulse on what was going on in the investigation, that the Bernsteins told him what had happened in the previous meetings and told him the truth of what happened.

THE COURT: I don't know if it's a long long way. This is the lawyer-client relationship, the lawyer knowing that the investigation is going on.

MR. KORSHIN: Yes.

THE COURT: Could the jury infer, let's say absent the tape, could the jury reasonably infer that the client told the lawyer something about the conversation?

MR. KORSHIN: Do clients always tell the truth? I think there must be proof that Mr. Fayer knew what went on during that conversation, your Honor. I am not talking about inferences, your Honor.

MR. DePETRIS: Your Honor, one, the conversation of the tape on February 8th is offered for two purposes. One purpose, and it clearly comes in without any question, that on the tape of the 9th the Bernsteins take part in some of the conversations. And we will have to prove as part of the perjury case as to what the Bernsteins meant by certain things they said. Because Fayer denies that he understood that is what they meant.

So we have to prove as an element of proof in our case what the Bernsteins meant.

THE COURT: So it's not hearsay on that issue.

MR. DePETRIS: It clearly comes in on that issue.

And the second issue, and your Honor can resolve this after your Honor has heard the tape, your Honor, but I submit that the jury can fairly draw the inference from the tape of the 9th that Mr. Fayer was aware of the conversation on the 8th. I think that's a perfectly fair inference.

THE COURT: More than that. He was aware that there was a conversation.

MR. KORSHIN: That's all.

THE COURT: No. I say more than that. I am saying from the relationship and from what Mr. Fayer says on the 9th--I read the transcript and he gives the impression that he knows more about it than the Bernsteins and that he is running the show, that he is directing everyone, employees of Eastern and everyone else, on what to say and what not to say; and that he knows everything of what is going on, about the two people who testified and that the testimony must be corroborated.

And he said it with such assurance. I started to doubt whether testimony had to be corroborated.

At any rate, the point is he indicates a complete knowledge of everything that is going on.

And there is references either by the Bernsteins or by Fayer which said, "Now we told you about this conversation and we told you about so much of it."

And I say, from those circumstances can't we reasonably infer that the client told the lawyer everything?

Of course, you say a client doesn't tell a lawyer everything.

MR. KORSHIN: I don't think you can infer that the client told the lawyer exactly what went on or in substance of what went on in that conversation.

You can certainly infer, and it's not denied that Mr. Fayer was told that there had been a conversation and was told certain things of what had occurred in that conversation, but not the whole conversation.

THE COURT: I think enough has been said here from the February 9th conversation that the jury may infer that everything was told or at least enough was told so that the substance of the tape may be brought before the jury. Instead of guessing what the client told the lawyer, I think it's only fair that the jury have the actual conversation.

MR. KORSHIN: But that doesn't establish what the Bernsteins told Fayer. That's the point that I make.

THE COURT: Well, when we talk about inferences, the inference may be improperly drawn. It's up to the jury to determine what is a reasonable inference based on their common sense and experience. But I think the Government lawyer can fairly argue to the jury, "Now, look, there was an intimate relationship here. They knew each other. They were close friends. He was the lawyer and did all the closings for them."

The impression I got from the conversation on the 9th is that the Bernsteins didn't make a step or a misstep without Mr. Fayer.

Why can't they infer from all that, that indeed the Bernsteins related everything that they remember and related it truthfully?

MR. KORSHIN: I don't see how that inference can be drawn.

THE COURT: Then you have an exception.

MR. KORSHIN: Yes, I do have an exception.

THE COURT: I will allow it.

And particularly, I think Mr. DePetris' argument makes sense. Bernstein's motive in talking to Mr. Goodwin is an issue in this case. So the conversation as to what Bernstein said is not hearsay on that issue.

MR. KORSHIN: I'm sorry, sir. Would the reporter repeat what the Court said?

THE COURT: Hearsay is not hearsay merely because a party to a conversation--I mean, because the defendant was not a party to the conversation. That's usually the rule. But where an issue does not involve the defendant, conversations concerning that issue made by the persons whose conversation bear directly on that issue is admissible as directly on that issue.

MR. KORSHIN: But the Bernsteins' understanding of what went on doesn't establish that Fayer understood.

THE COURT: Yes. But in order to prove what Fayer knew or what his understanding as to what the Bernsteins meant, we must also understand what the Bernsteins meant by it.

Sure, he may have misinterpreted what the Bernsteins meant, that's true. But that's an argument to be made. Even if the Bernsteins meant that, it doesn't mean that Fayer understood it to be such. But it doesn't mean it's not admissible on what the Bernsteins meant and intended.

I don't know if I make myself clear. You may not understand what I am saying.

MR. KORSHIN: I understand what you are

saying. But I can't see what the Bernsteins knew and meant and intended is an inference that he didn't tell the truth.

THE COURT: Let's take this very instance here. I am trying to explain something to you.

MR. KORSHIN: Yes.

THE COURT: How can I tell whether you understand what I meant unless there is first proof as to what I meant?

It's true, once determining what I meant in this very argument, you may nevertheless misunderstand what I meant.

MR. KORSHIN: Yes.

THE COURT: It may be my fault or yours. But certainly in order for there to be proof of what you understood what I meant, there should be proof in the record as to what I meant in the first instance .

MR. KORSHIN: I don't think so. The only question is what did I understand; not what did you understand, but what I understood.

THE COURT: Yes. The ultimate issue is what you understood. But in order to determine if you understood what I said, what I understood should be in issue because it may very well be what I understood is what I transmitted to you, and that you may very well lie as to what you meant.

MR. KORSHIN: Then there has to be proof of what was transmitted.

THE COURT: The conversation.

MR. KORSHIN: No. There is no proof of that.

THE COURT: The tape recording.

MR. KORSHIN: That's what was said at that time. But there is no proof of what was conveyed to Fayer.

THE COURT: This is a basis of inference which you refused to accept.

MR. KORSHIN: I can't accept it.

THE COURT: I can understand it. You are a litigant and you are an adversary; but I am trying to rule on evidence.

I am only saying that it's admissible because the question is what Mr. Fayer understood of the Bernsteins' conversation.

You have an exception.

MR. KORSHIN: I have an exception.

THE COURT: Seat the jury.

MR. DePETRIS: We have a stipulation, your Honor, as to the authenticity of the duplicate tape recording and the accuracy of the tape recording.

Exhibits 3 and 3A, I will offer them in evidence at this time.

MR. KORSHIN: There is no question as to it.

THE COURT: You say there is no question about it?

MR. KORSHIN: Yes, there is no question about the authenticity.

THE COURT: Let it be marked.

THE CLERK: Tape recording marked Government Exhibit 3 in evidence, and a transcript of the tape is marked Government's Exhibit 3A in evidence.

THE COURT: Is the jury getting a copy of the transcript?

MR. DePETRIS: Yes. I have copies of the transcript for the jury. I am going to use the transcript as it is in the record for appeal for my own purposes. And I know Mr. Korshin and your Honor has that.

THE COURT: Yes.

AGENT WILSON: I will advance the tape.

THE COURT: Suppose you advance the tape.

(Whereupon the tape is advanced and there is a pause in the proceedings.)

THE COURT: Now can you take it back to the beginning?

AGENT WILSON: Yes, your Honor.

THE COURT: All right. Start all over.

MR. DePETRIS: Your Honor, I think it's picking up right at the bottom of Page 1 now, "I have my pencil in my hat and damn near," and I think we can all go from there.

THE COURT: We all know where it's continuing from, at the bottom of the first page, "I have a pencil in my hat and damn near."

During the tape the Government's lawyer and Mr. Korshin may have questions to ask the witness. And when you see the headphones coming off, take your headphones off.

(Whereupon the tape recording of February 8, 1972 is played from Page 1, as indicated, to Page 12, as indicated.)

THE COURT: Now we are on Page 12 on the transcript, about the middle of the page, "And it's your word against Kapraki?"

BY MR. DePETRIS:

Q Mr. Goodwin, do you see the word Kapraki there on the tape?

A Yes, sir.

Q Would you tell the jury who Kapraki is.

A Yes. Kapraki was a real estate broker and speculator in South Brooklyn who bought and sold a great many houses. And the applications for mortgages which is to be insured by FHA was process through Eastern Service Corporation.

MR. DePETRIS: Okay, your Honor. We may continue then.

(Whereupon the tape recording referred to is continued from the point indicated on Page 12 to the point indicated on Page 16.)

THE COURT: We suspend on Page 16, "See. Now, not before now, just like a Roy Schiller or a Pat Buckley or anyone else.

"Yeah.

"Or a Frank Fey."

And that's where it ended.

BY MR. DePETRIS:

Q Mr. Goodwin, would you tell the jury who

Roy Schiller and Pat Buckley and Frank Fey are.

A They are employees of Eastern Service Corporation.

MR. DePETRIS: We may continue, your Honor.

(Whereupon the tape recording referred to is continued from the point indicated on Page 16 to the point indicated on Page 21.)

THE COURT: We stop on Page 21, "Did you tell H.C.?"

BY MR. DePETRIS:

Q Mr. Goodwin, there were a number of references there to H.C.

Would you tell the jury who H.C. is.

A Yes.

The H.C. that he referred to is Herbert Cronin (phonetic spelling) who is the chief underwriter at the Hempstead Insuring Office of the Federal Housing Administration.

(Whereupon the tape recording referred to is continued from the point indicated on Page 21 to the point indicated on Page 27.)

THE COURT: We stopped on Page 27, "Don Carroll told me that they're investigating in the, in the shop."

BY MR. DePETRIS:

Q Mr. Goodwin, could you tell the jury who Don Carroll is.

A At that point in time Don Carroll was the director of the Hempstead Insuring Office of the FHA.

THE COURT: Is that the top office in that position?

THE WITNESS: In that office it's the top position.

(Whereupon the tape recording referred to is continued from the point indicated on Page 27 to the point indicated on Page 37.)

THE COURT: At the bottom of Page 37, "So tell them the whole thing has been dropped."

BY MR. DePETRIS:

Q Mr. Goodwin, do you see a few lines up from the bottom of Page 37 where Harry Bernstein said, "At that time, I'll steer you clear to a good criminal lawyer which we will pick up"?

A Yes, sir.

Q What did you understand, "which we will pick up," to mean?

A They will pay the attorney's fee.

THE COURT: I think this is a good time for

(The jury enters the courtroom and the following takes place in open court and in the presence of the jury.)

THE COURT: These earphones are battery operated. And they are all turned off so the batteries wouldn't run down.

So I ask you to put the switch on again and put it high enough so that you could hear. And will you do that now.

And I think we are ready to continue.

MR. DePETRIS: We will be starting with the top of 38.

THE COURT: The beginning of Page 38 on the top?

MR. DePETRIS: Right.

(Whereupon the tape recording referred to is continued from the top of Page 38 on the transcript and played to the point indicated on Page 60.)

THE COURT: Stopped on Page 60 of the transcript, "It's privileged. When he says you better cooperate."

DIRECT EXAMINATION (continued)

BY MR. DePETRIS:

Q Mr. Goodwin, at the bottom of Page 60 where

Harry Bernstein says, "Ed, not even your attorney should know these things," what did you understand him to mean by that, Mr. Goodwin?

MR. KORSHIN: Objection, your Honor.

THE COURT: Objection sustained.

MR. DePETRIS: May we have a side bar, your Honor.

THE COURT: Surely.

The jury is excused.

(The jury leaves the courtroom and the following takes place out of the presence of the jury.)

THE COURT: This conversation is offered to show what the Bernsteins meant. The jury will determine that. His interpretation of what the Bernsteins meant cannot bind the jury.

You asked one question before which was similar to that and there was no objection, so I allowed it in.

MR. DePETRIS: Yes, I understand that, your Honor.

This witness was there and there were certain conversations and they are using words which deliberately may be ambiguous, although I think it's

That's all right.

But that's not what we have here.

MR. DePETRIS: I don't think Cioffi is limited to that here because it says we rather suspected the jury knew the words and phrases. We understand them without difficulty. So it's a situation that they are talking in somewhat vague language which is exactly the situation here. And that's my position, your Honor.

THE COURT: Judge Medina is almost my bible.

All right, seat the jury.

(The jury enters the courtroom and the following takes place in open court and in the presence of the jury.)

THE COURT: Objection to the last question was sustained.

You may proceed, Mr.DePetris.

MR. DePETRIS: Thank you, your Honor.

(Whereupon the remainder of the tape recording referred to was played for the jury.)

THE COURT: Please shut the earphones off until you hear the click.

(The jury complies.)

DIRECT EXAMINATION (continued)

BY MR. DePETRIS:

Q Now, Mr. Goodwin, after this conversation which we just heard which took place on February 8th, 1972, when was the next time you spoke to the Bernsteins?

A That evening.

Q And where were you at the time?

A I called them from my home.

Q And where did you call them at?

A At their home.

Q And who did you speak with?

A I spoke to Harry Bernstein and Rose was on the line, too.

Q And what did you say to them?

MR. KORSHIN: I object, if the Court please.

THE COURT: This conversation again has the limited use that the other conversation on the tape had. And I will charge you on that more fully on the main charge on what you may use this for.

Q Mr. Goodwin, what did you say to the Bernsteins at that time?

A I told them I have been trying to reach my attorney and wasn't able to reach him. I referred to him as the engineer, and I would keep on trying to reach him.

Q Referred to whom as the engineer?

A My attorney, Mr. Rohl.

And later that evening Rose Surestein called me back and told me not to try to reach--

MR. KORSHIN: I have the same objection to this, if the Court please.

THE COURT: Yes.

Excuse me for a moment.

(A pause in the proceedings.)

THE COURT: I'm sorry, may I have the question?

(The court reporter reads the requested portion.)

THE COURT: All right, the same ruling.

As I say, normally evidence of what a third party says is not introducible against the defendant. He wasn't present and he had no part of it. Normally a defendant is charged only with what he says or performs, and not with what somebody else says.

And I am allowing it only on the limited purpose I previously advised you on.

Q Now, Mr. Goodwin, you testified that Rose

Surenstein called you back later that evening?

A Yes. It was a little after 10:00 o'clock. And she told me not to try to reach the engineer, in other words, my attorney, any more. And she wanted to see me first thing in the morning at 8:30.

And I told her I couldn't see her at that time because I had a whole days work laid out for me and it would have to be later in the day.

And she said, "All right, we'll get together later in the day."

Q And did you have occasion to meet with the Bernsteins on the next day, February 9, 1972?

A Yes, sir. After the close of business.

Q And prior to meeting with the Bernsteins had you met with the FBI Agents?

A Yes, sir.

Q And were you equipped with a recording device?

A Yes.

Q And where did you meet the Bernsteins?

A Again, it was in the same general area, around the corner from the offices of the FHA and Eastern Service Corporation, a couple of blocks away on Hilton Street.

Q And who was present?

A Myself, Mr. Bernstein, Rose Surenstein and Mr. Fayer.

THE COURT: Rose Surenstein is also Rose Bernstein; is that true?

THE WITNESS: Yes, sir.

THE COURT: Rose Surenstein is her maiden name?

THE WITNESS: She was commonly known as Rose Surenstein.

A (Continued) And I am not sure if the car was driven by the chauffeur or not--yes, I believe it was.

BY MR. DePETRIS:

Q Now, had you expected Mr. Fayer to be there?

A No, sir, I did not.

Q Did you know who Mr. Fayer was at that time?

A Yes, sir.

Q And who was he?

A He was the attorney for Eastern Service Corporation.

Q Had he ever been an attorney for you?

A For me, sir?

Q Yes.

A No, sir.

Q Was he a friend of yours?

A A business acquaintance in years past, but I couldn't say friend, no.

Q And what did you do after you met in the car?

A I didn't actually get into their car. I got to the door of their car and they wanted to go out to eat dinner. And I agreed to that.

I went back and got into my car and followed them.

Q And where did you go?

A To a restaurant in Hempstead, Maison Pepi.

MR. DePETRIS: Your Honor, at this time I would ask that these two exhibits be marked as Exhibit 4 and 4A.

MR. KORSHIN: In evidence?

THE COURT: Any objection?

MR. DePETRIS: Yes, your Honor, there is a stipulation again.

MR. KORSHIN: I have stipulated they are accurate transcripts. And I did not stipulate that they are admissible. And my position is only those portions are admissible which would establish that Fayer is not telling the truth.

I don't think the whole thing is admissible. Mr. DePetris is simply retrying the whole first case.

THE COURT: Was there any question Mr. Fayer was present?

MR. KORSHIN: No, no question about that. He was present.

THE COURT: It's very difficult to excise irrelevant portions. I know there are portions where they are ordering meals.

MR. KORSHIN: I am not talking about that.

I am talking about there are things in there which has no relevance at all whether he told the truth at the previous trial.

What happened here, Mr. DePetris is retrying the earlier case.

THE COURT: The earlier case cannot be kept out of this case because he testified at the earlier trial.

I read the transcript of the tape and I see nothing in the tape that is so unrelated to the issue of truth telling that it shouldn't be in. And those matters such as ordering roast duck, and so forth, the jury will understand that it's there because if you believe the conversation, the conversation happened at a restaurant. And while they were talking they ordered food.

MR. KORSHIN: I am not talking of those parts.

THE COURT: You are talking of more important things?

MR. KORSHIN: Of course.

THE CLERK: Recording marked Government's Exhibit 4 in evidence and the transcript of the recording marked Government's Exhibit 4A in evidence.

(Whereupon the transcript is distributed by Mr. DePetris.)

THE COURT: Please put your headphones on.

(The jury complies.)

MR. DePETRIS: The first few minutes, your Honor, is inaudible, as the transcript indicates, and we have gone ahead on the tape, your Honor, subject to your Honor's permission.

THE COURT: That's fine.

(Whereupon the tape recording of February 9, 1972, is played for the jury to the point indicated on Page 27.)

MR. DePETRIS: Played until Page 27, about the middle of the page.

This might be a point to take a break, your Honor.

THE COURT: What was the line that you stopped on again?

MR. DePETRIS: "As I said initially".

THE COURT: "I was going to do a lot of listening"?

MR. DePETRIS: Yes.

THE COURT: All right.

We will take a short recess and the jury is excused.

(The jury leaves the courtroom and the following takes place out of the presence of the jury.)

MR. DePETRIS: Your Honor, at that point on top of Page 27, where Mr. Fayer says, "What do you gain? You can only lose, you can't gain," that's one of the portions of the transcript that's involved in count one of the indictment, where the Government, in order to establish one of the essential elements of the crime, must prove that Mr. Fayer's advice there related to the Grand Jury and not just to the

FBI. He was endeavoring to influence Goodwin not to go before the Grand Jury, as well as talking to the FBI, your Honor.

THE COURT: Yes. And when he testified at the trial, had it related to the FBI only--

MR. KORSHIN: Yes, that particular statement.

THE COURT: It has to be in the contents of the entire conversation.

MR. DePETRIS: Yes.

THE COURT: I noted on two pages where it might clearly be implied that the Bernsteins talked to Fayer about the conversation.

MR. KORSHIN: They told him something about the conversation. There is no question about that.

THE COURT: The heart of it, it seems, is on Page 12 and Page 25. There may be other references to it.

Where the paragraph begins, they call the present day, and they call it the Miranda Warning; and then further down, this is why when they, Rose mentioned this this morning I said, invite Goodwin to sit down because everybody is in the same boat.

MR. KORSHIN: Yes.

THE COURT: And then on Page 25, this is why--and I think this should be this is when or this is why it says, "When I heard this, I was stunned. You're the first man that ever made a statement like that."

And from the sense of it, I would think he wasn't talking about when he learned it first in this conversation or when he learned it before.

MR. KORSHIN: And Mr. Fayer would testify, as he did on the previous trial, precisely what Rose Bernstein did tell him.

And when you hear that testimony, you will see this fits right in.

THE COURT: I am not saying it's inconsistent with anything. I am just saying this gives support of bringing the previous day's conversation in.

MR. KORSHIN: On the other hand, Rose Bernstein and Harry Bernstein's insistence that you don't tell your lawyer anything also puts a different interpretation.

MR. DePETRIS: It's a two-edged sword.

THE COURT: Yes. You don't tell your lawyer everything, I will tell my lawyer everything.

MR. DePETRIS: Or you don't tell your lawyer anything and we won't tell our lawyer anything, with Fayer being there and knowing exactly what they mean when they don't even tell our lawyer that we pay bribes.

THE COURT: It's not the sense I get it. That's what they told Goodwin, but obviously they weren't telling him the truth because they did tell their lawyer about the conversation.

Why should their lawyer in the next day discuss the question of payments?

MR. KORSHIN: There is a reason.

THE COURT: As I say, I don't decide what the jury determines.

MR. KORSHIN: I understand what your Honor is saying.

THE COURT: I am saying it should be before them so they can make the determination.

MR. DePETRIS: Your Honor, with respect to that portion on the top of Pag e 27, which I call to your attention, A102, you can only lose, you can't gain.

One of the essential elements the Government must prove as part of the case--

THE COURT: Didn't you recite the whole

paragraph in your pleading?

MR. DePETRIS: Yes, that whole answer.

THE COURT: Yes.

MR. DePETRIS: One of the essential elements the Government must prove with respect to count one is that that statement there was part of the advice with respect to the Grand Jury and not just the FBI.

So I think, therefore, that paragraph, the meaning of that paragraph as Mr. Goodwin understood it, is relevant to that case.

For instance, in the mail fraud cases, when you're proving fraudulant representation, a statement of a defendant to a victim, the victim may testify as to his state of mind as to what he understood it to mean, and also I refer to the Cioffi case again.

And this is not what Mr. Bernstein meant, your Honor. This is what we have to prove, that Fayer was endeavoring to influence Goodwin and naturally the influence or the impact of what Mr. Goodwin understood those words to mean are a matter for the jury, your Honor. And I would endeavor to ask him that.

MR. KORSHIN: I don't think that Mr. Goodwin understood Mr. Fayer meant has any bearing on this case.

MR. DePETRIS: It's not binding, but it's a factor the jury should consider in deciding the meaning.

THE COURT: It's almost--the argument is almost--when the defendant is charged with armed bankrobbery with intimidation, and putting lives in jeopardy and the fear of placing lives in jeopardy, the victim may testify they were in fear, even though the Government must prove that what the defendant said or did was intended to place the victim in fear of his life.

I am saying that that's an analogy.

MR. KORSHIN: I don't think it's analogous, if your Honor please. I think it's the same situation we had a little while ago in the other tape where Mr. DePetris wanted to ask the witness what did it mean to you. The question is not what it meant to Mr. Goodwin. The question is what was Fayer saying.

THE COURT: But using the analogy, if the witness said that he understood that Mr. Fayer meant to tell me not to testify before the Grand Jury, and I charge the jury that it's not what Mr. Goodwin meant, but rather on what Mr. Fayer meant, but what Mr. Goodwin understood it to be if he were a reasonable man under all the circumstances, that they could use Mr. Goodwin's understanding of what he meant as evidence of what Mr. Fayer meant it to be.

MR. KORSHIN: I think such a charge would be completely erroneous. And if your Honor is going to do that, I have to change my position with respect to attacking Goodwin's credibility.

THE COURT: That will not influence me in my determination. I just have to decide this evidence question.

MR. KORSHIN: I don't think that what this meant to Mr. Goodwin has anything to do with this case.

THE COURT: Normally I would say it's true. You can't ask a witness what somebody else meant. That's normally so.

MR. DePETRIS: I am not asking him what Mr. Fayer meant. I am asking him what he understood it meant.

MR. KORSHIN: What he understood isn't important.

THE COURT: What he understood Mr. Fayer meant is his own mental process and not Mr. Fayer's.

MR. KORSHIN: That's right.

THE COURT: I am just wondering if it can come in under that analogy.

MR. DePETRIS: He was there. It's relevant to say what a reasonable person in his situation would mean.

Just like in the mail fraud case where the victim is allowed to testify what they understood a representation means. In a mail fraud case you have a representation and the Government argues it's misleading, and the defendant is arguing it's not. And the victim is allowed to testify as to what his state of mind was to that representation.

THE COURT: May I see Cioffi again?

MR. DePETRIS: Yes, sir.

(Handed to the Court.)

MR. KORSHIN: Goodwin is no victim here.

MR. DePETRIS: Yes, he is. We have to prove that Mr. Fayer attempted to influence him.

MR. KORSHIN: The charge here doesn't in any way relate as to whether or not Goodwin was or was not a victim.

THE COURT: Mr. DePetris is referring to the conversation of what he intended to do.

MR. DePETRIS: I am referring to one of the essential elements of count one which we must prove, is that there Mr. Fayer was attempting to influence Mr. Goodwin in connection with the Grand Jury.

MR. KORSHIN: That's right. But not what Mr. Goodwin thought Mr. Fayer was trying to do. Goodwin doesn't determine that. And what he thought Goodwin--rather, Fayer was trying to do, doesn't make any difference.

THE COURT: I have no other authority except Cioffi. Of course, Judge Medina cites an Eighth Circuit case. And the analogy I have with the element of fear in a 2113(d) violation.

MR. DePETRIS: And the mail fraud cases, your Honor.

THE COURT: Yes, whether the representation was actually designed to commit a fraud, and proof that the actions did the very thing which the sender designed or intended to commit.

It's close, but I think I'm going to allow it.

You have an exception.

MR. KORSHIN: Thank you.

I would like to ask your Honor something which has nothing to do with this trial.

THE COURT: Incidentally, I have something else on this trial. The last telephone conversation where Fayer recommends Mr. Korshin, is that going in?

MR. DePETRIS: Yes, your Honor. I have no need to refer to it that it is Mr. Korshin.

THE COURT: How are you going to get the tape in? Are you going to blank it out?

MR. KORSHIN: It doesn't trouble me.

THE COURT: I feel you might be embarassed.

MR. KORSHIN: No, I am not embarassed.

MR. DePETRIS: I didn't have the last trial, but I believe prior to the trial that question was raised and Mr. Korshin had waived the matter in that regard.

MR. KORSHIN: Until what time does your Honor intend to sit tomorrow afternoon?

THE COURT: Tomorrow afternoon, probably 5:30.

Today I may suspend at 4:30, and then take the probation violation, and continue the case because

And I'm going to ask you to get in very early, 9:30.

The lawyers advise me that the case may finish tomorrow. And if it doesn't finish tomorrow, it will have to go over until Monday because I have what we call motion day on Friday.

We are ready now.

EDWARD J. GOODWIN, having been previously sworn further testifies as follows:

DIRECT EXAMINATION (continued)

BY MR. DePETRIS:

Q Mr. Goodwin, we had finished up around the middle of Page 27.

Look at the top of that page where Mr. Fayer says, "This is the thing. Now, the answer is here is what do you gain? And that, that's the real, that's the real $64,000 question. What do you gain? You can only lose. You can't gain."

Now, what did you understand this to refer to?

A The question, "What do you gain," is referring to by cooperating with the United States Attorney or the Grand Jury or the FBI, you can only lose. By talking you can't gain anything.

MR. DePETRIS: We will pick up then from the middle of the page.

THE COURT: Now, I want the jury to understand it's not what Mr. Goodwin understood Mr. Fayer to say. The issue in this case is whether Mr. Fayer intended to tell Mr. Goodwin not to appear before the Grand Jury.

Now, the only reason I permitted this witness to tell you what he understood the defendant to say is only because if you believe that under all the circumstances Mr. Goodwin acted reasonably, and in the context of the conversation that what he understood it to be would be a reasonable interpretation of what Mr. Fayer meant, then it is some evidence as to what Mr. Fayer meant.

The important thing is in order to determine criminal intent you must look to what the defendant meant and intended.

And I say this is some evidence if you believe that Mr. Goodwin understood and acted reasonably under the circumstances.

MR. KORSHIN: I have a statement to make for the record. I don't know if your Honor wants me to make it from here or--

THE COURT: The jury is excused.

MR. KORSHIN: It will take only a moment, your Honor.

THE COURT: No, the jury is excused.

(The jury leaves the courtroom and the following takes place out of the presence of the jury.)

MR. KORSHIN: Very respectfully, I not only except to your Honor's ruling, I except to the statement that your Honor made to the jury, that Mr. Goodwin's understanding of what Mr. Fayer meant could be taken by the jury as some evidence of what Mr. Fayer meant.

THE COURT: Yes.

MR. KORSHIN: I except to that and I except to the whole of your Honor's statement to the jury, Judge.

THE COURT: You could have just objected to the charge, that's all. It was no different from what we discussed.

I thought you had something to add.

MR. KORSHIN: I think it was different from what we discussed, your Honor.

THE COURT: I told you the theory under which I will allow it. That's generally the charge I give in a bank robbery case where fear is in issue. And I thought I said that before I gave the charge, before I ruled on it.

MR. KORSHIN: I didn't mean to cause any unnecessary delay.

THE COURT: All right.

MR. DePETRIS: Is the jury coming back?

THE COURT: As soon as my courtroom deputy comes up with the aspirin. We are shorthanded, as you see.

(The jury enters the courtroom and the following takes place in open court and in the presence of the jury.)

THE COURT: Are you ready to proceed?

MR. DePETRIS: Yes, your Honor.

It's on Page 27, your Honor, in the middle.

THE COURT: All right.

Make sure you put the switches on.

(Whereupon the tape recording referred to is continued and played to the jury from the point indicated on Page 27 until indicated.)

MR. DePETRIS: Stopped at the top of page 51, after "If you are subpoenaed."

BY MR. DePETRIS:

Q Mr. Goodwin, would you look at the transcript and the bottom of Page 50, starting where Rose Bernstein says, "But tell him not to do any investigating,' up to the top of Page 51.

Now, where Rose Bernstein says, "Tell him not to do any investigating," who is "him"?

A My attorney, Ken Rohl.

Q And when Mr. Fayer says, "Please stay out of it, please," who was he speaking to at that time?

A Referring to my attorney.

THE COURT: Who was he speaking to?

THE WITNESS: To me.

BY MR. DePETRIS:

Q And what did you understand him to mean by telling him, "Please"?

A To tell my attorney.

MR. KORSHIN: Same objection, your Honor.

THE COURT: Same objection; same ruling.

A (Continuing) Telling me to tell my attorney to stay out of it.

Q And then on the top of Page 51 you say, "Stay out of it".

What were you referring to?

Q That my attorney should stay out of it and stop investigating.

MR. DePETRIS: And if we can pick up where we left off, your Honor.

(Whereupon the tape recording is played from the point indicated on Page 51 until the point indicated on Page 66.)

THE COURT: We will take a recess for about ten minutes.

Would you indicate where you stopped the tape, Mr. DePetris.

MR. DePETRIS: Yes, Your Honor.

On Page 66, the top of the page, "Want me to tell you something. If you want to go to Hawaii."

It was around there.

(The jury leaves the courtroom.)

(A recess is taken.)

(The following takes place out of the presence of the jury.)

THE COURT: What page did you stop on?

MR. DePETRIS: Top of 66, your Honor.

THE COURT: All right.

Seek the jury.

(The jury enters the courtroom and the following takes place in open court and in the presence of the jury.)

THE COURT: We are at the top of Page 66.

All right, let's go.

(Whereupon the tape recording referred to is played from the top of Page 66 as indicated to the bottom of Page 68 as indicated.)

MR. DePETRIS: We will stop at the bottom of Page 68.

BY MR. DePETRIS:

Q Mr. Goodwin, do you see three lines up from the bottom of Page 68 where Harry Bernstein says, "If you say anything, it blows everything"?

A Yes, sir.

Q What did you understand that to mean?

MR. KORSHIN: Same objection.

THE COURT: And the same ruling.

A He says, "If you say anything, it blows everything."

I understood it to mean if I cooperated with the United States Attorney or appear before the Grand Jury or talk to any of the FBI Agents any further, everybody will be in it, including them, including the

Bernsteins.

MR. DePETRIS: If we may pick up from there?

THE COURT: Yes, sir.

(Whereupon the tape recording referred to is continued to be played for the jury from the point indicated on Page 68 to the point indicated.)

(Whereupon this court reporter, Harry Rapaport, was relieved by Maurice Davis, court reporter, at 5:00 o'clock P.M.)

MSD/fip.

MR. DE PETRIS: We stopped at the top of page 90, about the third line down. Would you look at page 89?

Q Starting at about the middle of the page where Harry Bernstein says, "Like you always were," read the rest of that page to the top of page 90.

Do you see where Mr. Fayer says, "These two, as far as anything is concerned, will not talk."

On the top of page 90:

"I'll control that situation."

What did you understand that to mean?

MR.KORSHIN : Same objection.

THE COURT: Same ruling. I advised the jury it is what Mr. Fayer meant, not what this witness understood it to mean, but I am allowing this in as some evidence on the issue. Go ahead. You have the exception to the charge.

A My understanding of Mr.Fayer's statement was that as far as the Bernsteins were concerned, they were not going to talk to anyone in the Government investigation, F.B.I. or Grand Jury, or the U.S. Attorney, and that he would see that they wouldn't do it.

Q He would see that they wouldn't talk about what?

MR. KORSHIN: I object, if the Court pleases.

THE COURT: Yes, objection sustained.

No, just what you meant, what you understood Mr. Fayer meant by that statement.

Q You see where Mr. Fayer says, "Will not talk," Mr. Goodwin? What do you understand Mr. Fayer is referring to "Will not talk," about what?

A My relationship with the Bernsteins that I had received bribes from them.

Q If we will pick up, it's the top of page 90, your Honor.

(Thereupon, a tape recording was played.)

MR. DE PETRIS: Your Honor, that's the end of the first reel. Agent Wilson will now change the reel.

THE COURT: All right, will that take any length of time?

MR. DE PETRIS: About five minutes, your Honor.

THE COURT: I will excuse the jury for five minutes. No sense having them sit here while the reel is spinning.

I have been reading portions of Mr. Fayer's direct testimony in the trial before Judge Weinstein and that cited me to page one of the transcript where Mr. Fayer says, "Rose has mentioned to me this morning what you had said to her yesterday."

MR. DE PETRIS: That's one of the spots, your Honor.

THE COURT: And of course, you incorporate that in your question to Mr. Fayer?

MR. KORSHIN: Yes, of course.

THE COURT: The thought occurred to me that the conversations of the Bernsteins might very well be offered as part of a conspiracy to obstruct justice on the 371 conspiracy to violate 1503. I know you haven't urged that, but that's another ground. You don't have to have an allegation or charge conspiracy in order to introduce the evidence, once it's established.

MR. DE PETRIS: I understand, your Honor.

THE COURT: From here, the prima facie proof is that they got together.

MR. KORSHIN: That isn't what the indictment charges.

THE COURT: But in this court on evidence and question s to determine admissibility of evidence, if I find, and under the case United States against Demi, that if the preponderance of the evidence shows the existence of a conspiracy then statements

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made by one conspirator outside of the hearing of the other is chargeable against the accused, if he is a member of the conspiracy; if it is made during the course of the conspiracy for the purposes of the conspiracy.

I am just citing another ground.

MR. DE PETRIS: It doesn't even have to be a conspiracy. It could be a joint criminal activity.

THE COURT: We use conspiracy and joint crime. They are interchangeable for evidence purposes. The theory of agency is involved.

Seat the jury.

(Thereupon, the jury entered the courtroom at the time noted 5:15 P.M.)

MR. DE PETRIS: I will play the tape now.

(Thereupon, a tape recording was played.)

MR. DE PETRIS: Your Honor, the rest of it is just getting the coats.

THE COURT: Where did we stop; at about the middle of page 98?

MR. DE PETRIS: The top of the middle of page 98.

THE COURT: About where he said, "Yep, this is mine," Harry Bernstein?

MR. DE PETRIS: Yes.

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THE COURT: We will stop there. You have the tape?

MR. DE PETRIS: Yes, your Honor, but I have a few questions before the next tape though.

THE COURT: All right.

MR. DE PETRIS: The last tape, your Honor, is very short.

May I have this marked as the next Government exhibit?

THE CLERK: Business card marked Government's Exhibit five for identification.

THE COURT: Incidentally, you might shut the ear piece or the head phones off and save the batteries.

DIRECT EXAMINATION
BY MR. DE PETRIS: (CONTINUED)

Q Mr. Goodwin, I show you Government's exhibit 5 for identification and ask you if you can identify that exhibit?

A Yes, sir.

Q When was the first time that you saw that exhibit?

A The night that we were at this dinner, at the Maison.

Q Could you keep your voice up?

A Yes, at the night we were at the Maison Pepper.

Q What is that exhibit?

A The business card of Mr. Fayer's.

Q Did he give you that card at that time?

A Yes, sir.

Q What are the numbers on the front of that card?

A Yes, sir.

Q What are they?

A There's a home phone number.

Q That was the number you were supposed to call, after you contacted --

MR. KORSHIN: Your Honor, I must object.

A Yes.

THE COURT: On what ground?

MR. KORSHIN: It's all leading.

THE COURT: Overruled on the grounds stated.

MR. DE PETRIS: It was right on the tape, your Honor. I will offer it in evidence, your Honor.

THE COURT: Any objection?

MR. KORSHIN: Yes, I object. It's completely irrelevant. What does it have to do with establishing the truth or falsity of Mr. Fayer's testimony. He gave him a business card.

MR. DE PETRIS: I can answer that, your Honor.

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THE COURT: Don't answer it.

Let me see the card.

(Thereupon the Court looked at the above mentioned document.)

THE COURT: Objection overruled.

I can see the relevancy. I don't want to discuss it.

THE CLERK: Government's exhibit 5 previously marked for identification is now marked in evidence.

Q Mr. Goodwin,did there come a time after this meeting on February 9, 1972 that you had any further contact with the Bernsteins?

A Yes, sir.

Q When was that?

A On February 12 I received a call from Mr. Bernstein and he told me to call Mr. Fayer right away.

Q After the conversation with Mr. Bernstein, did you call Mr. Fayer?

A Yes, sir, I did.

Q Where did youcall him?

A Sir?

Q Where did you call him?

A Where did I call him?

Q Yes.

A I called him from an outside phone.

Q And you called at his office, at his home or where?

A At one of the numbers on this card. It was his home.

Q You had a conversation with him at that time?

A Yes, sir, I did.

Q Was that conversation recorded?

A Yes, sir.

MR. DE PETRIS: Your Honor, at this time I would have the tape and the transcript marked as the next Government exhibit.

THE COURT: All right, let it be marked.

MR. DE PETRIS: The same stipulation applies to these.

THE CLERK: Recording tape marked Government's exhibit 6 in evidence and the transcript of the tape marked Government's exhibit 6A in evidence.

THE COURT: All right, are we ready with it?

THE CASE AGENT: Yes, your Honor.

(Thereupon, a tape recording was played.)

DIRECT EXAMINATION

BY MR. DE PETRIS: (CONTINUED)

Q On the tape there, Mr. Goodwin, you spoke about writing the name of an attorney down; is that correct?

A Yes, sir.

Q Did you write it on Government's exhibit 5 in evidence on the back?

A Yes, sir.

Q And did you ever contact and employ that attorney?

A No, sir.

Q And thereafter, did you have occasion to testify voluntarily before the Grand Jury?

A Yes, sir; several occasions.

MR. DE PETRIS: I have no further questions.

THE COURT: We will suspend at this time and I ask you to come in early tomorrow because we will suspend at 3:45. Try to get into the courthouse at about a quarter past nine tomorrow. First, register downstairs and then, come to the jury room adjoining my courtroom. We will be moving into courtroom 5. My courtroom deputy will show you where it is.

Please don't talk about the case. When we reassemble tomorrow, don't discuss it amongst yourselves. Come in early tomorrow because we will suspend early. Thank you.

The jury is excused.

DIRECT EXAMINATION

BY MR. KORSHIN:

Q Mr. Fayer, you are a lawyer?

A I am.

Q When were you admitted to the Bar?

A June of 1942.

Q Did you start to practice immediately?

A 1946.

Q What happened in the interim?

A United States Navy.

Q Mr. Fayer, will you tell the Court and jury briefly what the nature of your practice has been in the last fifteen or twenty years, the general nature?

A General practice with a heavy accent on real estate matters and mortgage closing work.

Q Did you represent Eastern Service Corporation?

A I did.

Q Did you represent them generally or did you represent them only with respect to their mortgage closings?

A Both, I represented them in connection with mortgage closings and as general counsel.

Q You also represented other lending institutions, institutions licensed to make F.H.A. Loans?

A Yes.

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Fayer-direct

Q You still represent some?

A Yes.

Q Mr. Fayer, to your recollection have you ever met with Mr. Goodwin prior to February 9, 1972?

A I have no recollection of meeting him, but that wouldn't mean anything, he could have been at a closing I wouldn't remember.

Q Mr. Fayer, when did you first hear -- withdrawn.

You knew, did you not, Mr. Fayer, that an investigation was going on into F.H.A. lending practices?

A Yes.

Q You knew that Eastern Service Corporation was involved in that investigation?

You knew that Harry and Rose Bernstein were involved?

A Yes.

Q You knew there were employees of Eastern Service Corporation involved in that investigation?

A Yes.

Q You knew that many of them had been called before the Grand Jury?

A Yes.

Q You knew they had refused to testify and invoked their constitutional privilege against self-incrimination?

A Yes.

Q When did you first hear the name of Edward Goodwin in connection with that investigation?

A Morning of February 9th, 1972.

Q Before that morning, did you know -- had you received any information from anyone that Goodwin was in any way involved in that investigation?

A No.

Q How did you receive that word on the morning of February 9, from whom?

A I received a phone call from Rose Bernstein Shorenstein -- Shorenstein was her maiden name under which she operates her business.

Q What did she tell you?

A She told me that she had spoken to her husband and he had with Goodwin who was an old friend of theirs and he had been an appraiser at the F.H.A., he had been interviewed by two F.B.I. Agents. He refused to talk with them and he had contacted Rose and Harry Bernstein and asked them for advice. He also told them, so she told me, that he had contacted a friend of his who is an attorney. That he had spoken with him for a few minutes and his friend said: You ought to think about cooperating.

Then, he wanted some advice and would I be willing to sit down and meet.

Q With whom?

A With Mr. Goodwin.

Q Did she tell you for what purpose?

A He wanted advice.

Q She told you he wanted advice?

A Yes.

Q When you went to the meeting of February 9, did you go there under the belief that Mr. Goodwin wanted advice?

A I did.

Q When you talked to Mr. Goodwin at that meeting, did he at any point tell you he did not want your advice?

A Never.

Q Now, did Mrs. Bernstein tell you anything else about what had occurred at the February 8th meeting?

A No, sir.

Q Mr. Fayer, when for the first time did you find out what had occurred, what had actually occurred, at that February 8th meeting?

A I am guessing now, I think sometime in 1973 or thereabouts when I heard the tapes of the February 8th meeting played -- the Government would probably have the date.

Q Where did you hear that tape?

A In this building, the Government's offices.

Q Until you heard that tape played, did you know anything more of what had occurred at the February 8th meeting than what Rose Bernstein told you as you now relate it to this jury?

A No, sir.

Q Mr. Fayer, you are charged in Count one of this indictment with having testified falsely in the following respect, you were asked on the previous trial this question--

Mr. Fayer, I refer you to page 27 of the transcript. Now the transcript they referred to there was the transcript of February 9th, 1972 dinner meeting, is that correct?

A That is correct.

Q Top of the page, the second statement that you made to Goodwin and whoever asked the question quoted from the transcript: "Is this the same?" The answer is here: "What do you gain, and this is the real, the real $64,000 question. What do you gain? You can only lose. You can't gain."

Then you were asked: If that is the advice you gave to Goodwin concerning his testifying and cooperating with the Government.

Mr. Fayer, do you remember being asked that question?

A Yes.

Q Do you remember what answer you gave?

A Yes.

I said that I had given him that advice insofar as his talking to the F.B.I. It was my opinion and --

Q Just tell us what answer you gave.

MR. DE PETRIS: Your Honor the question is directed to the answer.

THE COURT: I will permit Mr. Korshin to ask him whether he recalls the answer without specific reference.

A I told him that -- my answer was -- that -- if my reference there was specifically to his discussing anything with the F.B.I., he had nothing to gain with the F.B.I., talking to them. The F.B.I. is not empowered to make a deal with him. Anything he would say to the F.B.I. could be used against him. It would certainly be a loss.

THE COURT: The question that was asked of you is asked by an Assistant United States Attorney?

THE WITNESS: Yes.

THE COURT: The Assistant trying the case at that time?

THE WITNESS: Yes.

THE COURT: The Assistant at that time was Gary Woodfield?

THE WITNESS: Yes.

Q Mr. Fayer, let me read the precise answer you gave:

"Not insofar as his testifying. Insofar as his answering any questions with the F.B.I. The F.B.I. [illegible] my understanding they are not empowered to make any deal or negotiate with him. He had nothing to gain by saying a word to the F.B.I."

Mr. Fayer, was that answer true when you gave it?

A That was.

Q Is it true today?

A Yes.

Q Is that what you were telling Goodwin not to cooperate with the F.B.I.?

A Yes.

Q In that statement?

A That's what I was telling him.

Q Were you, in this statement, telling him not to testify voluntarily before the Grand Jury?

A No. To my knowledge, he had not been called before the Grand Jury and he had nothing involved with the Grand Jury.

Q What were you telling him at that meeting with respect to his testifying before the Grand Jury?

A (No response).

Q What did you tell him?

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A If he was ever called, or subpoenaed, to get a good lawyer. That I repeated. I don't know how many times.

Q Mr. Fayer, I am going to hand you a transcript of the February 9, 1972 dinner meeting and I will refer you to specific pages of that transcript and ask you if you can read to the jury the statements that you made to Mr. Goodwin with respect to what he should do if he was served with a subpoena to testify before the Grand Jury.

Will you look please at page 51 of that transcript?

A Yes.

(continued next page)

BY MR. KORSHIN:

Q Will you read to the jury beginning with the fifth line down from the top?

A Right.

"If, but if you are subpoenaed, I would make no -- I'm now talking about a horse of a different color, I tell you now if you are subpoenaed then I suggest you get in touch -- that I would suggest you get yourself a good attorney, a good one in this field."

Q Now, go to Page 52 of that transcript and read beginning with the second line what you said on that subject?

A "You need somebody that knows his business, that can really protect you -- you know, somebody who is going to take an easy way out and throw you to the wolves, anybody can do that, that's easy. You want somebody who is good and -- and is right. If you are served at that point then you can get somebody who is good, somebody who knows them in the field and what their reputation is."

Q Now, please turn to Page 75 of that transcript, read to the jury what you said beginning with the fourth line from the top of the page.

A "Tell him to drop it. In the event you are served with a subpoena, then we will see about a top drawer, then, you're then -- you're then -- you're a top drawer man."

Q When you refer to, "Tell him to drop it," when you said that, to whom were you referring?

A His attorney.

Q You did tell Mr. Goodwin several times during this meeting to drop his attorney, did you not?

A Oh, yes.

Q Did you tell him why?

A Yes.

Q Did you have a reason for telling him that?

A I did.

Q What was your reason?

A Well, it was my feeling that Mr. Goodwin had said that he had spoken to the man for two or three minutes, five minutes or some very short time.

Q You say that was your feeling?

A He had said to me, right --

Q Yes --

A (Continuing) in the conversation --

Q Yes?

A (Continuing) that it was my feeling therefore that in a matter of this nature, a criminal situation, an attorney cannot in two or three or five minute conversation make up his mind. The duty of an attorney is to go into the facts to ascertain precisely what happened, what was done, then he has got to make the decision too, if assuming his man has committed something, whether he can go down to the United States Attorney and see what, if any deal he can work out for his client.

But this is not something you can do in a couple of minutes, this requires, shall I say, more than a three, four, five minute conversation, and this requires exploring it with the Government to determine what sort of representation the man should have to protect himself.

Q You were of the opinion that you were there in it to give advice to Goodwin?

A That is right.

Q Did you feel that that advice was the proper advice to give him in view of what you then knew and had been told with respect to his attorney?

A I did feel that was proper advice.

Q Please turn to Page 91 of that transcript?

A Yes, sir.

Q Count the lines up from the bottom.

The eleventh line or the twelfth line from the bottom.

Do you make a statement there with respect to -- to Mr. Goodwin, with respect to what he should do if he were called before the Grand Jury?

A I did.

Q What did you say at that point?

Read it.

A "See, if any subpoenaes are served get an attorney and a good one. Believe me, I approve of him, I would absolutely recommend, there is no reason to depend on your attorney, I would absolutely recommend a refusal to talk because of the job, you know where you stand here."

Q Well, what did you mean when you said, "I would absolutely recommend"?

A Absolutely recommend that he get a good attorney.

Q When you said, "Believe me, I approve of him," who is the "him" of whom you were talking?

A I had nobody in mind but someone -- I think I really meant, believe me, "someone that I would approve of as a good attorney.

Q Now when did Mr. Goodwin ask you to sign and recommend an attorney at any point?

A Yes, he called me on the twelfth, I think it was on the conversation.

Q Well, before the twelfth, during this meeting -- well, I will withdraw that question, Mr. Fayer.

You did seek an attorney to represent Mr. Goodwin so he could make a recommendation to him?

A I did.

2.30

Q Yes.

And why did you do that, was there some reason for your doing that, did you understand that he wanted you to do that?

A He had taken my card, I felt he was going to call me for a recommendation. I don't remember whether he had asked or not, I had given him the card and I assumed he would call me.

Q After that meeting, did you call someone, did you call a lawyer to find out if he would undertake to represent Mr. Goodwin?

A I did.

Q Whom did you call?

A You.

Q Did you then report to Mr. Goodwin the conversation that you had with me, and that was subsequent to that; is that right?

A In the tape of the twelfth I told him I had spoken to you, you might be interested in the case and he would have to talk with you.

Q Mr. Fayer, let us go back to Count 1 of the indictment.

In it then the Court, the Judge, asked you the following question, now at the bottom of the page you say:

"Somebody -- this is why I am here tonight."

And the question was:

"Were you there" -- the question is a little obscure but the import of the question was:

"Were you there that night to prevent Goodwin from talking?"

Do you remember the answer you gave?

A I don't remember the answer I gave, but I was there to prevent him from talking, to give him the advise based on what he told me, and I told him he shouldn't talk to the FBI.

Q Let me read the answer that you did give to the Judge as it was reported by the Reporter:

"No, sir. Goodwin had said that he was considering cooperating, and this is what I was told, and my advice to him would have been not to cooperate at the FBI level. That is what my feeling was. He asked for advice and that is why I was there that night, that is why I told him if he does he is going to have beginnings of a case."

Do you remember that answer?

A Yes, sir.

Q Was it true, Mr. Fayer?

A That was true.

Q Is it true today?

2.32

A It is true.

Q If you were today on trial for the same thing that you are on trial for in the previous trial, would you give the same answer?

A I would.

Q Mr. Fayer, let me go to Count 2 of the indictment.

MR. KORSHIN: Your Honor, will you excuse me, I would like a little water.

(Mr. Korshin then excused himself for a moment.)

(Continued on next page)

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BY MR. KORSHIN:

Q In Count 2 appears the following question that you were asked by the Judge on the previous trial:

"The Court: Then you say" -- the Judge was quoting from the transcript -- "'I tell you this, and I can assure you this, that these two, Harry and Rose Bernstein, as far as anything is concerned will not talk.'"

Now that was a statment that you made on the February 9th tape and then the Judge asked you:

"Now in the context, didn't it" -- it should have been, "Didn't that mean with respect to accusations that the Bernsteins were paying Goodwin?"

And your answer was what, doyou remember?

A I don't think so.

Q Was that your answer or is that what you are saying that you don't think you remember?

A No -- I -- I -- I -- I don't think that was the context.

Q Yes.

The answer that you gave to that was, "No, I don't think so."

A Oh!

Q Was that answer truthful when you gave it?

A That it was true.

Q Did you think that when you had said on February 9th:

"I tell you this, and I can assure you this that these two, Harry and Rose Bernstein, as far as anything is concerned will not talk," did you think that that referred -- that your statement referred to accusations that Goodwin -- that the Bernsteins, the Bernsteins were paying Goodwin?

A No.

Q Had you ever heard such accusations up to that time?

A No.

Q Now, then, the Judge continued and he asked you: "Weren't they talking" -- on page 88 and 89, that is page 88 and 89 of the transcript, "About accusations or possible accusations that the Bernsteins were paying to Goodwin."

And your answer was:

"No, your Honor, I don't see that context."

Was that your answer true?

A That answer was true.

Q Were you or were the people talking at pages 88 and 89 of the transcript about accusations or possible accusations that the Bernsteins were paying to Goodwin, as far as you understood what was being said that night?

A No, that was not what I understood.

Q Mr. Fayer, did you believe on February 9, 1972 that the Bernsteins had paid money to the -- to Goodwin?

2.35

A I did not so believe.

Q Did you believe the very contrary that they had never paid anybody?

A I did believe that.

Q And on what did you base that belief?

A There had been the investigation going on, the Bernsteins, and we had obtained counsel for the Bernsteins, and counsel for the Eastern Service Corporation, there had been various other counsel for various employees of Eastern Service Corporation. The counsel, original counsel for the Bernsteins, and I was present, had pressed them --

Q Who was that original counsel?

A That was Abe Brodsky.

Q Yes?

A He had pressed them very strongly as to whether they had ever paid anything, they denied it. He continually went after them and told them that he had to tell us -- the usual story -- you have to tell your attorney the truth, he can't represent you unless he knows. They denied paying bribes.

They subsequently engaged Judge Rifkin's firm and I was present at several meetings with counsel there and the same situation occurred. They were pressed and they were asked --

with respect to this, no, I don't, but the point is that the Bernsteins denied to their lawyers that they ever gave, and it is pregnant on the tapes that that is what they did and I don't dispute --

THE COURT: Then I don't have the problem.

Seat the jury.

(At 10:30 a.m. the jury tooks its place in the jury box.)

THE WITNESS: May I have a drink of water?

THE COURT: I will see that my courtroom deputy gives you some.

(The witness then was supplied with water.)

THE WITNESS: All right, thank you.

THE COURT: You may proceed.

BY MR. KORSHIN:

Q Mr. Fayer, I believe that when the Court excused the jury you were testifying to conversations at which you were present between Harry and Rose Bernstein and lawyers in Judge Rifkin's firm.

Tell us what was said -- how many, how many meetings, how many such meetings did you attend, incidentally?

A I really couldn't tell you, I would say six, eight, ten meetings, there were a number of meetings either at one attorney's office or another attorney's office. There were

2.39

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attorneys also for Eastern Service Corporation.

There were a number of meetings.

Q Tell us what was said with the lawyers in Judge Rifkin's office.

A Judge Rifkin very strongly pressed the Bernsteins as to whether they had ever paid any bribes to anyone. They flatly denied it.

I, frankly, am aware of the fact that clients have a tendency not to tell the truth always, I personally pressed the Bernsteins myself and I felt that I might do better if anything had been wrong because I had been representing them for upwards of 15 years and having represented them for that period of time I felt that they would tell me whether or not they had paid anybody any bribes.

They flatly denied it.

And as I say, I don't even recall how many times they were pressed by different attorneys and myself, but there were a number of times and they constantly denied it.

Q Did you believe them at that time?

A I did.

Q Did there come a time when you changed your mind?

A Yes.

Q When did that occur?

A When I heard the February 8th tapes.

Q That was in the United States Attorney's office?

A That is right.

Q The February 8th tape, that was right here, that was heard right here in this courtroom?

A Yes, sir.

Q You heard things on that tape that changed your mind?

A Yes,gave me the inference, that inference that I just hadn't been told the truth.

Q Yes.

Now, Mr. Fayer, you were then asked the following question by the Court:

"When Harry Bernstein says at the bottom of 89" -- of the February 9th transcript -- "'We don't know what you are talking about,' he may mean Rose and Harry Bernstein and by 'you are' mean Goodwin."

The Judge made that statement to you: correct?

A I mean -- I don't see it here.

(continued next page)

Q Look at Count 2 of the indictment.

A I am sorry, you said page 89, you threw me off, I was looking for it here.

(The indictment was then handed to the witness.)

Q Do you see that is quoted in Count 2 of the indictment, Mr. Fayer?

A Yes.

Q And then your statement to the judge was:

"I don't think so, your Honor."

Did you think so?

A No, I did not think that. When in the February 9th meeting -- the, the statement that Harry Bernstein made in my opinion was not what the judge interpreted it to mean, very frankly on February 9th I had not had the benefit of the February 8th tapes and I knew nothing about them. When the judge was making this statements he had the February tapes before him, which of course gave a different light to the whole picture.

Q When you were testifying in that other case were you testifying with respect to what you krew at that time?

A February 9th.

Q Or with respect to what you knew on February 9, 1972?

A I knew on February 9, that, that is what I was asked --

THE COURT: 1975!

THE WITNESS: 1972!

The tapes took place on February 9, 1972.

THE COURT: When you were testifying in the trial, the trial took place in February 1975.

THE WITNESS: 1975, yes, sir.

THE COURT: '75.

THE WITNESS: Yes, sir.

THE COURT: I thought the question was when you were testifying were you testifying from recollection as of 1975.

MR. KORSHIN: No.

THE WITNESS: The question that was asked --

THE COURT: I'm sorry then, I misunderstood.

THE WITNESS: That was the question asked --

MR. KORSHIN: I will make my question absolutely clear.

Q Mr. Fayer, you testified on that previous trial in February 1975: yes?

A Yes.

Q And were you asked questions as to the meaning and interpretation of various things which appeared on the

February 9, 1972 tape?

A That is right.

Q And you gave, you made certain statement with respect to the impute and the meaning?

A That is right.

Q Of what had been said and what was said on the February 9, 1972 tape?

A That is correct.

Q And when you made those statements, as to the impute and the meaning, were you speaking of the impute and the meaning that you had in February 1972 or the impute and meaning that you understood in February '75.

A No, February 1972, that is when the tapes were.

Q Mr. Fayer, did you understand at any time during the February 9, 1972 meeting that anybody was discussing accusations that Harry and Rose Bernstein had paid bribes to Goodwin?

A No.

Q With respect to accusations, what accusations did you believe were being discussed?

A Well, I had felt inthe beginning --

Q Just tell us what accusations you believe were discussed.

A Accusations that Goodwin had been accepting bribes.

Q And what did you base that belief on, Mr. Fayer?

A If a man says he is cooperating or he is thinking of cooperating, then he had to be cooperating about something that he did and I felt that Goodwin had been involved with some of the mortgage companies.

Q Mr. Fayer, let me go back to the earlier part of the quotation in Count 2 of the indictment where the Court asks you:

> "Then you say, 'I tell you this and I can assure this, that these two, Harry and Rose Bernstein, as far as anything is concerned, will not talk.'"

And the judge asked you:

> "Now, in that context, didn't you mean with respect to accusations that the Bernsteins were paying Goodwin?"

And you answered: "No, I don't think so."

Now, you know that a verbatim transcript of that trial was prepared, you know that, don't you, Mr. Fayer, and you know that what I hold in my hand is a verbatim transcript of that trial.

Was that your complete answer:

"No, I don't think so".

A No, that was not my complete answer.

Q Please turn to page 316 of the transcript of that trial and please read to the jury the complete answer that you gave of what you said after, "No, I don't think so," "No, I don't think so."

A "No, I don't think so."

"What had happened, and I am going back a way" --

Q Slowly, Mr. Fayer, I want the jury to hear it.

A Pardon me?

Q Slowly, I want the jury to hear it.

A "No, I don't think so."

"What had happened, andI'm going back a way, I had attended meetings with various counsel and I had attended meetings where the Bernsteins had the stories related previously in the tapes were told that they would -- or not to talk there to plead the Fifth Amendment. This took place in Judge Rifkin's office and this is the story there were he had said that if any client of his ever went down to talk first, this on a waiver, and those -- and I was positive, I was merely certain that the Bernsteins would plead the Fifth if anything was said, that is how strongly it was put."

2.46

Q Then the Judge asked you:

"Weren't they talking on page 88 and 89, about accusations or possible accusations that the Bernsteins were paying to Goodwin?"

And then you gave your answer:

"No, your Honor. I don't see that context."

Now, did the Court ask you another question after that?

A Yes, sir.

Q And did you give an answer to the next question?

A Yes.

Q Read the Court's question and the next question.

A "When Harry Bernstein says at the bottom of 89, 'We don't know what you are talking about.' He may mean Rose and Harry Bernstein and by 'you are' mean Goodwin."

"The Witness: I don't think" --

Q You were the witness?

A I was the witness, yes.

Q And the answer you gave was what?

A "I don't think so, your Honor."

Now if you go back and start at page 87 --

Q Page 87 of what, Mr. Fayer?

A Of the tape I think.

Q Of the transcript of February 9, 1972, the tape?

A The tape.

Q Yes, go on.

A If you go back and start at page 87, for example, right through at page 87, they denied ever giving anyone anything, they denied they told it to their attorney in New York, Judge Rifkin.

They go along and Rose Bernstein says on 88: "Don't you see what you're doing to yourself."

So forth and so on.

Q That is enough, Mr. Fayer, I don't think you need to read the rest.

Now, Mr. Fayer, when you gave the testimony which is quoted in Count 2 of the indictment, did you believe it to be true?

A I did.

Q Do you still believe that your answers were true when you gave them?

A I do.

Q Let's go, Mr. Fayer, to Count 3.

In Count 3 you are asked the following question:

2.48

"Question: Page 86 (sic) of the transcript, Mr. Fayer" --

Page 86 (sic) of the transcript refers to the transcript of the February 9th tape; is that correct, Mr. Fayer?

A Page 68.

Q Page 68, yes, I'm sorry.

Page 68, I am corrected.

That refers to page 68 of the February 9, 1972 transcript; is that right, Mr.Fayer?

A Yes, sir.

Q "Page 68 of the transcript, Mr. Fayer, down at the bottom of the page where Harry Bernstein states:

"'If you say anything, it blows everything.'"

Then you were asked:

"Were you present when that statement was made, Mr. Fayer?"

And you answered in the end that you thought you were present becasue you hadn't left the room on any occasion.

And the question was put to you: "Question: Right above, where Mr. Bernstein says, 'I am working behind the scenes,' throughout this conversation, Mr. Fayer, throughout those statements made by

Mr. Bernstein, what didyou believe it to be referred to?"

Do you remember what answer you gave?

A Yes.

"One of the questions" -- do you want me to read it, I'm sorry?

Q Do you remember what answer you gave?

A Yes.

Q What answer did you give?

A Well, the investigation of the FHA.

Q Just tell us what answer you gave.

A Oh, I said I believed --

Q The answer to that question.

A Pardon me.

Q What answer did you give to that question, to that question which says, "'I am working behind the scenes,'" that referred to what?

A It refers to the fact that Harry and Rose Bernstein were keeping their fingers on the pulse of the matter, they were consulting with their various attorneys and the attorneys were determining who had been called down to the Grand Jury and what had been going on, what the steps of the investigation were so that they would be aware of the status of the entire matter.

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Q Was that true when you said it?

A Yes.

Q Did you believe it tobe true?

A Yes.

Q You knew it to be true?

A Knew it.

Q You know it to be true today?

A That's right.

Q Then you were asked -- then you continued with your statement. You said, "As far as if you say anything, it blows everything up. If Goodwin says anything, he would be finished."

Then you were asked, "Who would be finished?" And you answered "Goodwin." Then you were asked, "So it's your statement that Harry Bernstein was not referring to himself, that was referring with respect to and concern for Mr. Goodwin, was that your understanding of what Mr. Bernstein meant?"

Do you remember what answer you gave?

A Yes, he was referring to Mr. Goodwin.

Q Let me read the answer that you gave. You said "Yes. That was my understand. The Bernsteins constantly denied giving the man anything."

Was that answer true?

A Yes.

Q Was that your understanding of the meaning of those words, "If you say anything, it blows everything?"

A Yes.

Q Did you understand those words to mean that if Goodwin talks, it blows everything as far as the Bernsteins were concerned?

A No.

Q Did you know anything that the Bernsteins had to be concerned about, about blowing anything?

A Not a thing.

Q At that time you did not know?

A At that time.

Q Now you know differently?

A Now I know differently.

Q In the fourth Count of the indictment, Mr. Fayer, there is a point at which you made a statement and you said, "Please stay out of it."

Then you were asked as to whom you addressed that statement and your answer was that you had addressed that statement, "Please stay out of it", to Rose Bernstein.

You are now accused, Mr. Fayer, of having lied and that in fact you made that statement to Goodwin. Did you make that statement to Goodwin?

A No, that statement was made to Rose Bernstein.

Q What was the occasion? What reason did you have for making that statement to Rose Bernstein?

A Rose Bernstein had been constantly interrupting and she had interrupted something I was saying at that point and it was just one of those things when it boiled over and I said, "Please stay out of it", to keep her quiet--to keep her quiet to shut her up.

Q Mr. Fayer, you had on several occasions, told Mr. Goodwin that he should get rid of that lawyer, hadn't you?

A Yes.

Q You remember how many times you said it?

A As a matter of fact I counted them up last night, eight times.

Q Did you have any reason, Mr. Fayer, when you were asked for the 9th time to deny that you had made that statement?

A No reason whatsoever.

Q Did you address that remark to Mr. Goodwin?

A No, that remark was addressed to Rose Bernstein and if I had meant it very frankly -- if I had meant it to refer to Goodwin's attorney, I would have said, "Please tell him to stay out of it."

When I say, "Please stay out of it," I am referring to someone present -- right then and there.

MR. KORSHIN: Would your Honor excuse me for just a moment.

(Pause.)

I have no further questions.

THE COURT: Cross-examination, Mr. De Petris.

MR. DE PETRIS: May I have just a minute, your Honor?

(Pause.)

CROSS-EXAMINATION

BY MR. DE PETRIS:

Q Mr. Fayer, at the outset I would just like to clarify something about your testimony as it relates to the specific counts of the indictment.

Would you turn to Count one of the indictment, just to review your testimony in that count?

A Yes.

Q Is that the count that relates to the question of whether or not your advice to Goodwin, not to talk, meant solely to the F.B.I. or also meant not to testify before the Grand Jury?

A That's correct, that is the count.

Q And your testimony is today that you meant those references to refer about not talking, "What do you gain You can only lose.", to the F.B.I.; is that correct?

BY MR. DE PETRIS: (continuing)

Q It is a possibility, isn't it?

A It's a possibility.

Q And yet you didn't advise Mr. Goodwin of that possibility, did you?

A I did not.

Q Was that because, Mr. Fayer, that that possibility would have been to the disadvantage of the Bernsteins, your friends and clients?

A No.

Q Mr. Fayer, did you agree with the principal that the professional judgment of a lawyer should be exercised solely for the benefit of his client and free of compromising influences and loyalties?

A Yes.

Q At the time of this meeting in 1972, Eastern Service Corporation and the Bernsteins were friends and clients of yours; isn't that correct?

A That is correct.

Q And you were aware of the possibility at that time that Goodwin was involved in criminal activity with the Bernsteins; isn't that correct?

A No, I was not.

Q You were not aware of the possibility?

A The possibility, yes, there was a possibility.

Q You were aware that the Bernsteins, that there could have been a possibility that the Bernsteins were lying when they denied paying bribes; is that correct?

A Possibly, yes.

THE COURT: Again we are referring back to the time --

THE WITNESS: In 72.

THE COURT: (Continuing)--the time of the conversation in 72.

A There was a possibility, yes, I didn't believe it to be so, but --

Q And you were also aware of a possibility at that time, were you not, Mr. Fayer, that Goodwin might testify against the Bernsteins?

A A possibility.

Q And at that February 9th, 1972 meeting you were very concerned with protecting the Bernsteins; isn't that correct?

A Not really, no, sir.

Q You weren't concerned with protecting the Bernsteins?

A I didn't say that, I had some interest in protecting them, there's no question about it, but I was not very concerned about it because I didn't believe they were involved.

Q Were you concerned with protecting the Bernsteins atthe February 9th, 1972 meeting?

A To a certain extent, yes.

Q And did you consider that at that meeting you were free of compromising influences and loyalty when you gave advice to Goodwin?

A I did.

Q Is it just a coincidence, then, Mr. Fayer, that you only discussed the kinds of cooperating and not the advantages of cooperating with the Government?

A No, that is not a coincidence.

Q Did it have anything to do with the fact that that advice or that possibility would not benefit the Bernsteins?

A No, sir.

Q Did you consider that you exercise your professional judgment and gave legal advice to Goodwin solely for his benefit?

A Yes, sir.

Q Well, you also were aware, were you not, that that advice would protect the Bernsteins?

A It might if they were guilty.

Q And you were concerned with protecting the

Q So there you were talking about and discussing accusations or allegations or possible accusations or allegation that Goodwin had received bribes from the Bernsteins, were you not?

A Absolutely.

Q But you still maintain the position that you weren't referring to accusations such as accusations or allegations on the portions of the testimony in the indictment; isn't that correct?

A Certainly.

Here there is a possibility, if you will, and as I said before that when someone is called in and he makes a deal, he is liable to talk about anything, whether true or not. The Bernsteins constantly denied giving him bribes.

They denied to me, to anybody.

Q Thatpossibility existed?

A The possibility existed.

Q When you made the statements you were discussing the statements on page 49 of the transcript; is that correct?

A Yes.

Q That possibility did not disappear all of a sudden when you were discussing the statements that appear in the indictment -- that possibility still existed at that time, didn't it?

A Yes, the possibility existed. That is why if you notice -- are we on Count two?

Q Count two.

A -- That's why, if you notice, my answers - "I don't think so" and "I don't see that context -- there is a possibility", but I kept saying, "I don't think so." There is a big difference between the awareness of a possibility -- which is always there -- and that's why I did not make a different statement. I just couldn't see it after all their denials.

Q To admit here that you were discussing the accusation --

A Here there would have been different accusations.

Q At this point in time, you are aware of the possibilities of such accusations, were you not?

A I was aware of it, but I didn't think that is what he meant.

THE COURT: We'll suspend at this time for lunch. The jury is excused until 2 o'clock. We will continue then.

(Jury leaves the courtroom.)

THE COURT: Mr. De Petris, can you tell me how much longer you think your cross-examination will be?

MR DEPETRIS: I have almost finished the area

A That's what I said, yes.

Q So, directing your attention to that alternative of voluntarily testifying before the Grand Jury, it is your testimony that you were not advising Mr. Goodwin not to do that, is that correct, when you said don't talk, is that correct?

A That is correct.

Q Now, is it therefore also your testimony you would have been satisfied in 1972 at that meeting if Mr. Goodwin had voluntarily testified before the Grand Jury and implicated the Bernstein's?

A When you say would I have been satisfied, in what respect do you mean satisfied? Would it have made any difference to me?

Q Yes.

A Yes, certainly, a client of mine would have been implicated.

Q You were concerned about it at that time, about the Bernstein's being implicated?

A There was that possibility, yes.

Q Therefore, weren't you at that meeting in 1972 endeavoring to influence Mr. Goodwin not to testify voluntarily before the Grand Jury?

A Absolutely not.

Q Even though you wouldn't have been happy if he had done that, is that correct?

A Of course.

Q That is your testimony?

A That is my testimony.

Q Of course, the Bernstein's would have been very upset at that time if Mr. Goodwin had voluntarily testified before the Grand Jury and implicated them, is that correct?

A I certainly think they would have.

Q You weren't endeavoring to convince Mr. Goodwin not to do that at this meeting?

A I was not.

Q Would you turn to Page 93 of the transcript.

A Yeah.

Q I'm sorry, Page 18 of the transcript.

A Yes.

Q Do you see in the middle of the page where you say "Everybody sit tight, everybody has to sit tight"?

A Yes.

Q "This is what I've advised them. This is what everybody has done."

A Yes.

Q When you use the words "sit tight" there, you were referring to, among other things, sit tight with respect to the Grand Jury, were you not?

A Among other things.

Q Sit tight meant don't talk with the FBI, United States Attorney, don't talk with the Grand Jury, is that correct?

A That is correct.

Q But when you told Mr. Goodwin to sit tight, don't talk, it is your testimony you didn't mean that, is that correct?

A That is correct, because Mr. Goodwin had said and it was my understanding that he had only been interviewed by the FBI. He wasn't at this stage yet. When the Grand Jury subpoena was served they were then advised to take it up with counsel.

Q Mr. Goodwin decided to cooperate, then there was the danger he would voluntarily appear before the Grand Jury?

A If that is what his attorney wanted him to do, that was his privilege.

Q When you said sit tight and don't talk to them, you only meant the FBI?

A That's all he was involved with.

(Continued on next page)

Q Now, when you were at this meeting of February 9th, Mr. Fayer, was it your idea to simply give Mr. Goodwin advice as to his rights and your opinion as to what he should do or was it in addition your idea to persuade and to convince Mr. Goodwin to follow a particular course of conduct?

A No, it was my idea to give him advice, what you might call the boiler plate advice, it was my idea to give him the advice to sit tight and let him get a good attorney. My feeling was based on what I understood from Mr. Goodwin that his attorney, having discussed the matter with him for three or four or five minutes was really not competent, he didn't do the job I felt he should have, therefore I gave him the boiler plate advice to get a good attorney.

Q You didn't feel he gave him the proper advice, his attorney, although his attorney talked about the possibility of investigation, even though the attorney wanted to investigate the case further; isn't that correct?

A He had only talked to him three or four minutes.

Q But he said he wanted to investigate -- and the first thing you do, and you know this as well as I do, you sit down with the client and talk to the client for a good long time, not for three or four or five minutes.

Q You find out all the facts from the client and then you investigate the case, don't you?

A First you get the facts from the client.

Q You didn't get the facts from Mr. Goodwin, did you?

A No, I just gave him boiler plate advice, I didn't want to represent him.

Q You weren't just trying to persuade or convince Mr. Goodwin to any course of conduct, you were just giving him advice and letting him decide?

A No, I was there to give him the advice to sit tight and to get a good attorney, that is what I felt he was entitled to.

Q And were you there not only to give him that advice but to convince him to do that, to follow your recommendation?

A I wasn't there for that purpose but I will say this that I sort of developed into that purpose because I felt that he had been misled.

Q The tapes are replete with situations where you are trying to persuade him to do something.

A That is correct, I felt that he was entitled to what was better representation.

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A And get a good lawyer.

Q And get a good lawyer?

A That is right, that is boiler plate advice.

Q Was it a part of your purpose, Mr. Fayer, in attacking Mr. Goodwin's attorney, was it a part of the purpose in doing that to persuade Mr. Goodwin, to convince him to follow your advice?

A I think so, I think that my advice was correct.

Q Did you ever ask Mr. Goodwin if he would sit down with the United States Attorney and work out a deal?

A No.

Q Or an agreement?

A No.

Q At a number of places, one of them being Page 38, you tell Mr. Goodwin that he made a serious mistake in going to a friend; is that correct?

A That is right.

Q It was your opinion that gratuitous advice was worth nothing; is that right?

A Yes.

Q That it was unwise for a person to follow the advice of an attorney without paying the attorney; isn't that correct?

Q Finally, Mr. Fayer, page 89 of the transcript: Do you have it?

A Yes.

Q The top of the page, Mr. Bernstein is talking about a week's vacation and "come work for us. Work here or in Florida," and then right after that, they tell him, "If anybody asks you anything, the answer is no, no." Do you take the juxtaposition of those two comments about the job, denying everything, as effort on the part of the Bernsteins to induce Mr. Goodwin to say nothing?

A No, because if you continue on they denied that they don't -- they don't know -- "We don't know what you're talking about. We don't know what you're talking about. We don't know what you're talking about." They constantly deny this. This is what they're denying. This is why -- and I'm going back to my '72 understanding, when they deny the fact that they have given anything, they denied it to the man to his face, the man never said, "You did give me something." They constantly denied it. This is something that I have to consider is so.

Q One final question, Mr. Fayer:

Do you believe it is improper for a lawyer to acquiesce in the payment of compensation to a witness contingent upon the content of that witness's testimony?

recall the indictment was marked into evidence and it charged corruptly endeavoring to influence Mr. Goodwin in connection with the grand jury.

If you recall, also, there was evidence by stipulation that Fayer's testimony as set forth in the present indictment is a true and accurate transcription of those portions of his trial testimony given under oath on February 20, 1975.

Let's review for a minute the charges in each count of the indictment.

Count 1 of the indictment, that's the count which refers to the portion of the transcript of the tape of February 9th, where Mr. Fayer said, "This is the thing. Now, the answer is here, what do you gain? And that's the real, that's the real $64,000 question. What do you gain? You can only lose. You can't gain."

Mr. Woodfield, the United States Attorney in charge of that case, then referred Mr. Fayer to that portion of the transcript and asked, "Is that the advice you gave to Goodwin concerning his testifying and cooperating with the Government, Mr. Fayer?

"Answer: Not insofar as his testifying. Insofar as his answering any questions with the FBI, the FBI, it's my understanding they're not empowered to make any deal or negotiate with him. He had nothing to gain by saying a word to the FBI."

Then later on the Court asks Mr. Fayer a question, referring again to portions of the transcript.

"THE COURT: Now, at the bottom of the page, then, you say, 'Somebody, this is why I am here tonight.'"

And then the Court asks Mr. Fayer this question:

"There that night to prevent Goodwin from talking?"

The witness answers: "No, sir. Goodwin had said that he was considering cooperating, and this is what I was told. And my advice to him would have been not to cooperate at the FBI level. That's why my feeling was he asked for the advice and that's why I was there that night. That's why I told him if he does, he is going to have the beginnings of a case."

So, the essence of the charge in count 1 is that Fayer lied when he gave that testimony and that Fayer was, at the February 1972 meeting, endeavoring to influence Goodwin not to testify voluntarily before the grand jury.

Now, count 2 of the indictment -- your Honor, perhaps it would be easier if I would distribute

MR. DE PETRIS (Continuing) I would ask you now to refer to count 2 of the indictment. Just take a moment to read the portions of the trial transcript that are quoted there.

(Short pause.)

MR. DE PETRIS: The essence of the charge in count 2 is that Mr. Fayer lied when he gave that testimony and that he and the Bernsteins were discussing accusations and allegations that the Bernsteins had paid bribes to Goodwin, and we'll listen to the tape later. Right now I want you to understand what the charge is.

Now take a moment, please, and look at count 3, the portions of the testimony from the trial which are quoted in count 3.

(Short pause.)

MR. DE PETRIS: Again, the question there being asked by Mr. Woodfield and the answer given by Mr. Fayer at the trial of 1975. Now, the essence of that charge is that Fayer lied when he gave that testimony, and that when the Bernsteins said, "If you say anything, it blows everything," Mr. Fayer understood him to be referring to Harry Bernstein as well as others, Goodwin, Rose Bernstein, Eastern Service accepted or rejected it. Placed a dollar value on the house as to its worth and fixed the repairs that the FHA would require to be done before they insured the house.

Alfred Fayer was the attorney for Eastern Service Corporation and the Bernsteins, and handled mortgage closing for Eastern Service Corporation. He also had offices located at 175 Fulton Avenue to handle the mortgage closings and we had his business card introduced in evidence with the address on it.

What was the relationship between Goodwin and the Bernsteins? You recall the testimony of Mr. Goodwin from the witness stand that in March of 1967 he met with the Bernsteins and at Harry Bernstein's office at Eastern Service Corporation. Bernstein told Goodwin he would be going into Brooklyn to do FHA appraisals, and from time to time he would be appraising houses in which Bernstein had an interest and that the Bernsteins would pay him $50 for each such appraisal, which he did.

Rose Bernstein also encouraged Goodwin to take the money -- I think the words used from the witness stand were "sock it away." And, thereafter, during the years 1967 through 1971, Goodwin did take bribes from the Bernsteins. He met them in Harry Bernstein's office at Eastern Service Corporation on various occasions and reviewed or went over the appraisal which he had done, and the Bernsteins paid him $50 for each of the particular appraisals in which they were interested. All told, during those years, the Bernsteins paid Goodwin approximately $15,000 in bribes.

What did Goodwin do in return for the bribes? The evidence showed, as he testified, that he would inflate the appraisal value of the house, the dollar value of the house, and from time to time he accepted houses he should have rejected, and from time to time he minimized repairs which he should have required be done. That's the background of the relationship between Goodwin and the Bernsteins.

Now if you recall again, the evidence which came in in the beginning of the trial, by stipulation, and I'll read it to you now, Exhibit 1:

"In 1971 and 1972, the federal grand jury in the Eastern District of New York was conducting an investigation into fraud and bribery in the real estate industry regarding FHA programs and insured mortgages. In the fall and winter of 1971, a number of officials and employees of Eastern Service Corporation were subpoenaed to appear before the grand jury. These employees invoked their Fifth Amendment privileges upon appearing before the grand jury as follows: Harry Bernstein on October 29, 1971. Rose Bernstein on October 29, 1971. Florence Behar on October 29, 1971. Frank Fayer on December 1, 1971. William Roy Schiller on February 3, 1972. Patricia A. Buckley on February 3, 1972."

The evidence will show that during the course of the investigation which I just referred to, in the middle of December of 1971, Bernstein arranged a meeting with Goodwin, and at that meeting the Bernsteins told Goodwin that they had been before the grand jury, which they had, on October 29th of 1971, and that they had claimed Fifth Amendment and they told Goodwin that, "If you are called before the grand jury, take the Fifth."

At that point in time, Bernstein, if you recall, gave Goodwin $500, a little something for Christmas he told him, to keep his mouth shut, and that no one would get hurt. It was a little while after that in January of 1972 that Goodwin was visited by two FBI agents. After that meeting, Goodwin went and consulted with his attorney. Then Mr. Goodwin and his attorney met with Mr. Estrada, the United States Attorney who was conducting the FHA grand jury investigation.

Goodwin reached an agreement with the Government; he would cooperate and testify concerning his illegal activities. He would plead guilty to one count of conspiracy and the sentencing judge would be advised of his cooperation. Thereafter, he began to cooperate with the Government.

On January 31, 1972, Goodwin called the Bernsteins and another meeting was set for February 1, 1972. At that meeting Goodwin told the Bernsteins about his visit by the FBI, and that the FBI had told him, Goodwin, that they had evidence he had received bribes from the Bernsteins. Naturally, the Bernsteins were concerned about this. They told him the FBI is fishing, don't talk, take the Fifth Amendment before the grand jury. They would get him an attorney and they would pay the attorney's expenses.

Thereafter, Goodwin met with the Bernsteins, this time on February 8, 1972, and that was the first taped conversation which you heard during the course of the trial, the meeting of February 8th.

(continued next page)

MR. DE PETRIS (Continuing) Goodwin told the Bernsteins that he had been to an attorney and had discussed his situation with the attorney. Goodwin told the Bernsteins that the attorney had, naturally, wanted to know what had happened and he told the attorney the truth, and the Bernsteins were extremely upset by this. As you will recall, on the tape when Goodwin told the Bernsteins that he told his attorney the truth, that is, he had received bribes from the Bernsteins, they said, "Wrong, wrong, wrong, that's the worst thing you could have done," and a number of other comments to that effect.

Why were they upset because Goodwin told his attorney the truth, that is, he received bribes from the Bernsteins?

Also, during this conversation which you heard during the trial, the Bernsteins said to Goodwin, "Don't tell anyone, not even your attorney. We didn't even tell our attorney the truth." Referring to this meeting with the then attorney Judge Rivkind. The Bernsteins urgently advised Goodwin not to talk, keep his mouth shut, take the Fifth if called before the grand jury, and told him, "We took the Fifth Amendment, the other Eastern Service Corporation employees took the Fifth Amendment."

And if you recall, Goodwin told the Bernsteins on February 8, 1972 that his attorney wanted to investigate the matter. Again, the Bernsteins were very upset, "Don't let them find out a thing."

Goodwin told the Bernsteins his attorney had mentioned that sometimes it's better to cooperate with the Government, and again the Bernsteins were very upset, "Get rid of the attorney, we'll get you a good one when you're subpoenaed. Fire your attorney this very night and then call us back and tell us you dropped your attorney."

Later that evening, Goodwin did call the Bernsteins. He told them that he was unable to reach the engineer, which if you recall was a code word for his attorney, the Bernsteins were very concerned about any wiretapping of their phone so they had wanted to use code words to Goodwin. He told them he was unable to reach the engineer, meaning the attorney, but would keep trying.

Later in the evening, Rose Bernstein herself called Goodwin back and couldn't wait for his call. Goodwin said he didn't reach the attorney yet. Rose Bernstein said, "Don't bother, we'll get together the

February 9, 1972, to firm up Goodwin so he wouldn't talk.

Let's turn now to the meeting of February 9, 1972 and perhaps with this understanding of the background I went through, the conversations at that meeting may, perhaps may be more understandable and make sense and would make more understandable why Fayer and the Bernsteins were endeavoring to influence Goodwin not to cooperate, not to talk to the FBI, the United States Attorney and the Grand Jury, and if subpoenaed, "We'll get you an attorney."

Now, at the time of this meeting of February 9, 1972, the evidence shows Fayer, Mr. Fayer was aware there was a possibility that Goodwin might implicate the Bernsteins in paying bribes. He admitted that he knew the Goodwin's attorney suggested that cooperation with the Government was a possibility, a possibility because Rose Bernstein had told Fayer that. Accordingly, at the very outset of the meeting on February 9, 1970, without even asking Goodwin any questions, without asking Goodwin what the underlying facts were, at the outset, Fayer's advice to Goodwin was, on page 3 of the transcript, "Say nothing. This is the same advice I've given to the Bernsteins."

Throughout the transcript, as you heard on the tape also, Mr. Fayer endeavored to influence Goodwin to follow this tack which all the others had followed. Mr. Fayer told Goodwin how several Eastern Service Corporation employees had helped thwart the ongoing investigation by claiming the Fifth Amendment before the grand jury, and otherwise not talking, and he explained to Goodwin the rationale behind this tactic in an effort to convince Goodwin to follow it.

I would now like to read from page 22 of the taped transcript, and again you can hear the tape if you wish during the course of your deliberations, and I urge you to do so. But, reading now from page 22, Fayer explaining the rationale behind the tactic to Goodwin.

"This is why I say to everyone, this is not only you. Everyone is in the identical position. They are damned if they do and they are damned if they don't. You think they're not in that same position? And this is why I have said and my advice is this to them: Refuse to testify, and this is what they did. Each and everyone of them, everyone did the same thing. Refuse. That was the end of it. Now the attorney's in a position, the U.S. Attorney is in the position, he's looking for cooperation. There's no question about it, but he can't find it."

Fayer told Goodwin that his situation was no different than the others and said, on page 12, "Rose mentioned this morning and I said invite Goodwin to sit down because everybody's in the same boat." And he assured Goodwin I'm giving you no different advice now than I gave them before.

During portions of the February 9th meeting Mr. Fayer and the Bernsteins complimented one another in an effort to influence Goodwin to adopt this tactic. You will recall at one point in the conversation they were discussing Fayer and Eastern Service Corporation employee, Frank Fey, who had been down in the United States Attorney's Office for questioning. I would like to read from that portion of the transcript. Fayer: "They told Frank Fey, we know all about what happened to your man, so tell us the rest of it. See. Frank Fey, Frank Fey, you know Frank?"

Goodwin: "Uh-huh."

Fayer: "Frank," Frank meaning Frank Fey "says drop dead."

Harry Bernstein: "He walked out."

Fayer: "He walked out."

Rose Bernstein: "That's right."

Fayer: "Yeah."

Harry Bernstein: "What are you intimidating me?"

Goodwin: "Gutsy."

This goes on and on, discussing how Fey had told the United States Attorney to "drop dead."

Why is it, ladies and gentlemen, that Mr. Fayer related this to Mr. Goodwin? Do you think he is trying to convince Goodwin to do the same thing, don't talk to the U.S. Attorney? Do you think his advice is only related to the FBI?

Fayer also told Goodwin, put himself forth to Goodwin as being fully aware of what was occurring in the FHA investigation and related to him, he told him, Goodwin, he was aware of the activities of the New York Department of State in relation to the FHA scandal, and he knew those people that had testified before the Department of State, and Fayer said he knew who was before the grand jury, who was cooperating in talking about the graft. And, with this broad knowledge of the investigation that he was conveying to Goodwin, Fayer endeavored to assure Goodwin the Government investigation was getting nowhere.

He constantly emphasized the weakness of the Government's investigation.

attorney's fees, he advised Goodwin to contact Harry Bernstein, there would be no problem with respect to that matter.

Then as you recall from Goodwin's testimony, he did not contact the attorney. He did not employ the attorney. He testified voluntarily before the Grand Jury and testified at the trial against the Bernsteins about the bribes which he had received.

So those are the basic events that took place on February 9th of 1972, and I am about now to turn to the specific issues which you must decide, and that is the perjury charges which are before you. But before I do that, let me just take a moment and discuss the reasonable inferences which you, the jury, may draw from the taped conversation of February 9, 1972, and again listen to that tape, listen to it and understand it.

Question: Did Fayer know or believe that the Bernsteins had made bribes to Goodwin?

Question: What was Fayer's basic purpose at the February 9th meeting, to protect the Bernsteins or to protect Goodwin?

On the first question, on the one hand Mr. Fayer contends Mr. Bernstein never told him that they paid any bribes, they denied it to him. On the other hand, there is evidence that points the other way. Fayer and the Bernsteins had a close relationship. Fayer was coordinating the tactics of everyone refusing to cooperate and everyone refusing to testify; to protect the Bernsteins had said on tape about the Bernsteins testifying, that they're damned if they do and they're damned if they don't. Does that indicate an awareness on Fayer's part of the Bernsteins having received bribes, of they're damned if they do and they're damned if they don't.

(continued next page)

MR. DE PETRIS (Continuing) Fayer tried to give an explanation for it when he testified in this trial, said something about they were damned if they do if they did testify because they had an attorney that was strong-minded and might withdraw from the case if they did testify.

Well, I ask you to use your common sense on that argument. Do you really think that Fayer meant they are damned if they do because of the question of whether or not the attorney would represent them?

And further, if you will recall in the tapes on a couple of instances Bernstein told Goodwin, he could confide in Fayer.

Page 77 of the transcript, Rose Bernstein:

"Because to Al you can talk."

Harry Bernstein: "Al you can talk to."

On page 94, Rose Bernstein says: "See, to Al you can talk."

Now, whether or not Fayer was actually told by the Bernsteins that they had paid bribes, there is again strong evidence that he at least believed that they had paid bribes to Goodwin and acted accordingly.

Again, as I say, before he was coordinating the tactic of everybody refusing to testify, why, to protect the Bernsteins. Further, he operated under the premise that Goodwin had received bribes and he heard that the Bernsteins urgently had advised Goodwin he shouldn't even tell his attorney certain things.

Rose Bernstein, on page 52: "Even with the lawyer, there are certain things you do not say. Do you understand?"

That's Rose Bernstein talking to Goodwin.

Further, Fayer heard the Bernsteins discuss this same philosophy with respect to their own attorneys. The Bernsteins emphasized to Goodwin they denied to their own attorneys they had ever paid bribes, and emphasized the word "our own attorney."

Now, what reasonable inferences do you draw from that? Apply your common sense to that. Obviously, the Bernsteins are saying to Goodwin, we had denied it to our attorney and you deny it to your attorney.

If the person is innocent and hasn't paid any bribes, of course he is going to tell his attorney he didn't pay any bribes, and it's obvious there is no reason to emphasize it. It doesn't serve to make any point. But if you had paid bribes as the Bernsteins did, and if you deny it to your attorney, then there is a reason to emphasize it. There is a reason to make this point to Goodwin to convince him to do the same thing to his attorney.

Surely, Fayer could not have reached that point. The only reasonable inference, I submit, that can be drawn from the conversation, otherwise why would he say it would, the need to emphasize that fact and you can listen to it on the February 8, 1972 tape. Listen to that tape and draw reasonable inferences from what the Bernsteins said, and you can conclude they paid bribes but he would have not drawn on the same inferences from the February 9, 1972 tape.

I ask you to listen carefully to that tape.

Also, there were a number of statements on the tape of February 9, 1972 suggesting the Bernsteins told Fayer everything about the February 9, 1972 meeting. On page 1 and 2, "Rose had mentioned to me this morning what you had said to her yesterday. Be very, very careful about volunteering any information or say anything."

On page 12, "Rose mentioned this this morning. I should invite Goodwin to sit down because everybody's in the same boat."

Further, on page 51, "The Bernsteins have told me certain things about the expenses," referring to paying Goodwin's attorney's fees.

Moreover, you can notice the straight parallels between the advice that the Bernsteins gave Goodwin on February 8th and the advice that Mr. Goodwin gave on February 9th. February 8th, the Bernsteins regarding Goodwin's attorney: "Don't tell your attorney anything, don't let him do any investigating, get rid of him."

The same thing is repeated on February 9, 1972. February 8, 1972 about Goodwin's cooperating with the Government, "Don't talk, sit tight, don't do anything until you're subpoenaed. Then we'll get you an attorney. Everybody else is taking the Fifth before the Grand Jury."

And what advice is given? What statements were made on February 9th by Mr. Fayer? The exactsame statements.

Having said that, however, I should point out to you it's not really necessary for you to decide that question, how much the Bernsteins had actually told Fayer and what Fayer's belief was regarding the Bernsteins' bribes. It's not necessary for you to resolve that question in order to resolve the perjury

Remember how upset they were when Goodwin said he had told his own attorney the truth? Remember how upset they were that his attorney even suggested the possibility of cooperating. If Fayer had said that, the Bernsteins would have been outraged at him. How long do you think he would have lasted as the attorney, the real estate closing attorney for Eastern Service Corporation if he had given that advice to Mr. Goodwin? I think that makes the point perhaps better than anything else.

Do you really that Mr. Fayer, an attorney for over twenty-five years, an attorney and close friends of the Bernsteins who barely knew Mr. Goodwin, do you really think he could have so actively and one-sidedly engaged in the efforts to influence Goodwin not to talk, and yet also be genuinely concerned with Goodwin? Do you really think he would be present here and acquiesce in the offer to Goodwin of a job in Florida, so clearly conditioned on Goodwin's not implicating the Bernsteins, and not realize it was hush money? Do you really think that? It boggles the mind.

With that understanding, I think we can now turn, finally, to the perjury charges, and I think fact, as we heard this tape there, I think there was a word in the tape that comes across pretty clearly which isn't in the transcript. At the bottom of page 50 where Fayer says, "Please stay out of it. Please." The word on the tape comes out pretty clearly that he says, "Please state out of it completely." Listen carefully and decide who he was referring to, and I submit he certainly wasn't telling the Bernsteins to stay out completely, but --

MR. KORSHIN: I am sorry, Mr. DePetris. If the Court pleases, I always hesitate to interrupt summations but I think Mr. DePetris has gone beyond the stipulation. There was a stipulation that the transcript was correct and now Mr. DePetris is seeking to add something to the transcript.

THE COURT: You mean his reference to the tone on voice on the tape?

MR. KORSHIN: No, he says there is another word in there.

THE COURT: I missed that, then. I don't know what you are referring to, Mr. Korshin; what other word?

MR. KORSHIN: Mr. DePetris said that "If you listen to the tape, you will see what Mr. Fayer said was, Stay out of it completely."

MR. DE PETRIS: There is a word that doesn't appear on the transcript and it does appear, at least I hear it and I'm asking the jury to listen to it, as it appears on the tape.

THE COURT: I think that lawyers can comment on what else is on the tape. There are parts of the transcript which show it's inaudible and if the jurors hear something that the transcriber couldn't hear, I leave it to the jury.

I think I charged the jury at the outset, the tape is the evidence even though the lawyers stipulated it was accurate, that does not mean that either lawyer cannot say to the jury, "Now I want you to listen very carefully and see if you don't hear what I think is on the tape."

And you may indicate your interpretation. I'll allow it.

I think at this point we'll take a short recess. The jury is excused.

(Jury leaves jury box.)

MR. DE PETRIS: I'm about finished, your Honor. I think I probably have another ten minutes.

THE COURT: Had I know that --

arguments that he makes in support of Mr. Fayer's credibility, and then I will have an opportunity to address you and rebut those arguments and to discuss further Mr. Fayer's credibility.

As Mr. Korshin addresses you and makes his remarks to you, I would ask you to keep a couple of things in mind. Let's see if Mr. Korshin has any convincing explanation as to why the defendant Fayer would go to the meeting and give advice to Goodwin in a situation so clearly involving a potential conflict of interest between the Bernsteins and Goodwin. Why would he go there unless his purpose was to protect the Bernsteins? Let's see if he has any convincing explanation as to why the defendant discussed the various aspects of the investigation, the FBI, the United States Attorney and the Grand Jury investigation, discussing these areas at length without once mentioning the possible advantages of cooperating with the Government, unless, of course, the purpose was to convince Goodwin not to cooperate. Let's see if Mr. Korshin can explain it, the somewhat conflicting and contradictory statements which the defendant Fayer has made as to whether or not he or the Bernsteins had been discussing accusations and

MR. DE PETRIS: Just right at the outset, ladies and gentlemen, let's get something straight on the last comment that Mr. Korshin made. Of course, an attorney has a right to give a client advice; he is entitled to give a client advice as to what to do. But, a lawyer is not entitled to put himself in a conflict of interest situation and give someone like Goodwin one-sided advice, and give someone like Goodwin, who is not a client, no client-attorney relationship, Fayer admits he couldn't represent Mr. Goodwin and he is not entitled to come in there to give Mr. Goodwin any advice for purposes of protecting the Bernsteins. That he is not entitled to do and Mr. Goodwin, he really was there seeking advice from someone, is entitled to more than one-sided advice for purposes of protecting someone else.

Let's get that straightened out right at the outset.

Another thing, the United STates Attorney's Office does not go after attorneys who give advice to their clients.

Another thing let's get clear right at the outset, Mr. Korshin at the start of his argument spent some time talking about how long in my summation

I had spent discussing the events of February 9, 1972 as opposed to the specific perjury charges, and why did I spend as long as I did discussing those with you? I told you why, because if you understand what happened on February 9, 1972, then you'll be able to understand its involvement with the perjury charge. Mr. Korshin doesn't want you to spend too much time on February 9, 1972. He would prefer you to try and ignore it, but you can't ignore it, that's part of this case and it's presented to you as the background facts of why Mr. Fayer testified as he did at that trial.

Let's examine that for a minute. Mr. Korshin in his summation made a point of why would he lie? Would he get up on that witness stand and lie? Well, let's address that just for a moment to see if you can understand the situation in which Mr. Fayer was confronted with at the time he testified in his defense at the 1975 trial and perhaps you'll then be able to understand why he gave the testimony that he did, why it was that he lied at the defense of his trial.

It's quite obvious on the tape of February 9, 1972, that he was attempting, endeavoring to influence

Goodwin not to testify before the Grand Jury investigation. You heard the tapes, so I submit to you when Mr. Fayer took the stand at that trial, he had essentially two alternatives before him. One, he could take the stand and testify as he did, that is to the effect of his advice relating only to the FBI and not to the grand jury, his purposes of the meeting was to protect Goodwin and he did not tell Goodwin not to tell his attorney to do any investigation, he thought Harry Bernstein was trying to protect Goodwin and not himself and that Rose Bernstein and Eastern Service Corporation and the Bernsteins did not discuss the allegations that they had paid bribes to Goodwin but that there was a second alternative, and I think I can make the point if I said just what that second alternative was. He could have taken that stand and been more candid. He could have admitted hewas trying to convince Goodwin not to talk, not to talk to the FBI and not to talk to the United States Attorney, and not to talk to the Grand Jury. He could have taken that stand and candidly admitted that that was his basic purpose at that meeting, it was to protect the Bernsteins and that's why he didn't tell Goodwin about the option of cooperating with the Government and the advantages in doing that.

He could have admitted that this was the Bernsteins' basic purpose for being there, that is, if Goodwin said anything that it would blow everything to the Bernsteins as well as any other person. He could have admitted that he told Goodwin to tell his attorney not to do any investigating. He could have admitted that, yes, and the Bernsteins had also been discussing accusations and allegations that the Bernsteins had paid bribes to Goodwin. He could have claimed that he also thought that this happened also, and the best course for Goodwin was not to cooperate. He claimed he didn't think in his own mind that he was acting corruptly, he didn't think in his own mind that this was a corrupt thing or a crime to do that.

I think if he chose the second alternative, the more candid one, then one way or the other, the matter would have been finished right then and there. But he failed to do so, so he took that stand and testified falsely and here we are on a perjury charge.

Now why did Mr. Fayer testify as he did? I think it's obvious from the two alternative situations that I just gave you, if Fayer had made those admissions, surely it would have been damaging to the trial, the charges he was on trial for in 1975. The judge will charge you that it is not a crime to corruptly endeavor to influence a witness with respect to the FBI, whereas it is a crime to corruptly endeavor to influence a witness with respect to the grand jury. So, if Fayer could establish at the trial that his advice related only to the FBI, he would be not guilty as a matter of law, even if he acted corruptly in protecting the Bernsteins in giving the advice that he did.

I submit to you, that provides motive for Fayer's corrupt testimony in count 1 of the indictment, testimony which otherwise does not simply make sense , since it is so clear from the tape that his advice did relate, did not relate solely to the FBI, and it did include the UNited States Attorney and the Grand Jury.

Similarly, as to motive with respect to the other counts of the indictment, they are, had he testified truthfully and admitted he had been -- admit the allegations that they paid bribes, that Harry Bernstein was concerned about protecting himself, when he said, "If you say nothing," if he admitted he told Goodwin not to tell his attorney to do any investigation that it would be damaging to his defense in the case, because it shows he was more defense would have for the contradictory statements that Mr. Fayer made concerning whether or not we had been discussing accusations and allegations that the Bernsteins paid bribes to Goodwin -- on page 89 in the transcript -- and I want you to have very clearly in mind -- take a look at count 2, the portion of the trial trasncript which is quoted in count 2. Mr. Fayer saying, "No, I don't think so. No, your Honor, I don't see that context. I don't think so, your Honor. That is with respect to the question as to whether or not they were discussing on the bottom of page 89 of the transcript whether or not they were discussing accusations or allegations that the Bernsteins paid bribes to Goodwin.

After seeing count 2 I would ask you to take a look at the bottom of page 89 of the transcript. I submit, ladies and gentlemen, if you listen to that tape which you did earlier today, listen to it carefully, it's obvious that Fayer and Bernstein are discussing Bernstein paying bribes. Goodwin says: "We don't know what you are talking about. We don't know what you are talking about." -- talking about with respect to what, with respect to allegations that he received bribes from the Bernsteins.

and you will come back tomorrow and continue.

JUROR NO. 4: Thank you, your Honor.

THE COURT: All right. But if you are nervous and you would rather not --

JUROR NO: 4: No, not at all. I'm very, very calm.

THE COURT: All right.

Madam Foreman and ladies and gentlemen of the jury:

The case you are about to deliberate on is the United States of America v. Alfred Fayer. The defendant, Alfred Fayer, is charged with four counts of violation of Title 18, United States Code, Section 1623. In effect, those violations charge him with lying under oath on February 20, 1975, in a trial before one of the judges of this court. The charge against this defendant in that trial was corruptly endeavoring to influence a witness, and it was a violation of Section 1503.

I think it's important at the outset for you to understand that he is charged with lying in this case, as set forth in the indictment, and not with the other charge of corruptly endeavoring to influence a witness. The other case was referred to by both lawyers only because it was with reference to the charge under

Section 1503 and that the indictment says he lied, but you must, as the expression goes, keep your collective eye on the ball. The charge is lying under oath in the other trial.

A jury trial under our system of jurisprudence is an adversary proceeding. In some other countries, it's an accusatory proceeding where lawyers are not in the same position as they are in a trial in this country. The lawyers contest; they take opposing sides on the fact issues in the case. The theory is if lawyers of comparable ability litigate over an issue, the evidence will develop during the trial for the jury to see. Lawyers represent clients and they work best when they work with the zeal that the client is entitled to.

In this case we witnessed the efforts of two fine lawyers representing their clients' point of view. However, they are protagonists and they are one-sided in dealing with the issues, and that's the way it should be.

The Court and the jury, on the other hand, are objective and dispassionate. There is a clear line of demarcation between the function and authority of the jury and the Court. I told you initially that you are in every sense judges, but you are judges of the facts.

In this case, the material issues, as I recall them, are whether the statements were false, the statements given on February 20th in the other trial, February 20, 1975, and whether they were knowingly false. There are other sub-issues but those are the two main issues.

You and you alone will decide those fact issues. You will decide them in accordance with the law as I charge it.

Just as you are the sole judges of the facts, so I am the sole judge of the law and you must accept the law as I charge it. Applying the law to the facts as you find them, you will decide the guilt or innocence of the defendant as to each count charged. My charge will refer to all of the counts in the indictment. If I point out a specific charge or a specific count, as I will when I come to charge the essential elements of the crime charged, except in those instances, the principle of the law applies to all of the charges. Since there are four charges, four counts in the indictment, it's as if you were trying four separate cases.

The defendant is presumed to be innocent of all the charges in the indictment. This means that at the outset of the trial and throughout your deliberations, you must presume that the defendant is innocent of the crimes charged. That presumption is a strong, time-honored presumption in Anglo-American law. It means that the presumption of innocence alone is enough to acquit a defendant.

You have heard the term Scotch verdict. In Scotland, there are three verdicts: guilty, not guilty and not proved.

In this country we have only two verdicts: guilty and not guilty, and not proved includes not guilty. So if the Government hasn't proved its case, proved the guilt of the defendant beyond a reasonable doubt, you have the obligation of finding the defendant not guilty.

A reasonable doubt is the kind of doubt a person would have after reviewing all the evidence in the case. It's not a speculative or imaginary doubt. It's not a doubt based on whim. It's not a doubt based on an emotional disinclination to perform an unpleasant task. A reasonable doubt is a kind of doubt a reasonable person would have in a matter of great importance to himself or herself. Proof beyond a reasonable doubt is, therefore, proof of such convincing character that you will be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

The Government is not required to prove the defendant's guilt beyond all doubt. The Government's burden is heavy but it doesn't go that far. The Government's burden is not to prove that every bit of evidence offered at the trial is true beyond a reasonable doubt. The Government's burden is to prove all the essential elements of the crime charged beyond a reasonable doubt.

A reasonable doubt may arise from the failure of the Government to offer proof. The defendant is not obligated to offer any proof. In this case, the defendant took the witness stand and testified, but the defendant has the right to rely upon the failure of the Government to prove guilt beyond a reasonable doubt.

What is the evidence in the case? The evidence is the testimony of witnesses, regardless of who called the witnesses, and all the testimony: the direct examination, redirect, cross-examination, recross. The evidence includes the exhibits which are marked in evidence and they, in turn, include the tapes of pre-recorded conversations. As I recall, the conversations were with the Bernsteins on February 8, 1975, conversations with the Bernsteins and the Defendant Fayer on February 9th -- did I say '75? I meant '72; you recognize that I was wrong. February 8, 1972 and February 9, 1972, and the telephone conversations between Goodwin and the defendant Alfred Fayer on February 12, 1972. The tapes themselves are the evidence in the case. The transcripts are merely guides so that you may more easily follow what you heard on the tapes.

I think it's important that you understand what is not evidence in the case. Statements made by lawyers in their opening and closing statements, or their summations, are not evidence. They're designed for the purpose which I suggested to you, and that was, that the opening statement is made to aid the jury in following the testimony that is to come, and the closing statements are made so that you might understand what the lawyers regard as the important evidence in the case. They suggest theories of inculpability, which means arguments made by Mr. DePetris that the Government proved guilt beyond a reasonable doubt, and the theory of exculpability, which means, arguments made by Mr. Korshin indicating that the Government failed to prove guilt beyond a reasonable doubt. Of course, it's impossible for you to accept both theories, or all of the theories offered by both lawyers. But you may be aided in the suggestion of either theory suggested by one of the lawyers, and it may be attractive to you and it may help you arrive at a fair decision in the case; that's the purpose. The point is that opening and closing statements by lawyers are not evidence.

I don't recall whether I made any statements, but if I did, anything I said is not evidence and while I'm at it, I might charge you that the questions I asked didn't have any special significance. I asked questions where I thought there was some confusion in the record, and if I was confused, I thought the jury might be confused. But don't attach any significance to any answers to questions I asked. They are no different than any other questions that are asked by the lawyers. At times, objections were sustained to questions. An objection was rare in this case, but you may not speculate on what the answer might have been were the witness permitted to answer. The theory is the witness did not answer and so it wasn't part of the record, or isn't part of the record. The same is true of matters stricken from the record.

As I direct the Court Reporter to physically strike it from his notes, so you are directed to figuratively strike it from your mind and memory. The same theory is that it's not in the record once it's stricken and you may not consider it.

Evidence is classified in two general categories: One is direct evidence and the other is indirect, and more commonly called circumstantial evidence. Direct evidence is the testimony of witnesses as to what that particular witness saw or heard. Of course, evidence is the method that the law uses to prove or disprove a disputed fact and in circumstantial evidence, the disputed fact is proved or disproved by the jury drawing reasonable inferences based on good common sense and experience from the established facts.

The example I usually give is this one: If you were sitting as a jury in a personal injury case, let's assume that the claim of the plaintiff is that the defendant's motor vehicle passed a stop sign, without first stopping as required under the vehicle traffic law in the State of New York. Let's further assume that the courtroom deputy, Mr. Adler, was standing on a particular corner where the stop sign was erected. Let's assume I was facing the stop sign and he had his back to the stop sign and the roadway, and we were talking on the particular day. If I were called to testify, I might testify that I saw the defendant's car, it might be a 977 white Cadillac, proceeding at 70 miles an hour down the highway and passed the stop sign without stopping, and struck Mrs. A.

Well, the disputed fact there is whether or not the defendant's motor vehicle stopped first at the stop sign before proceeding. I was able to give direct testimony on that issue because I saw it. It's important to identify the issue that's in dispute. My courtroom deputy could not give direct testimony on that issue, but he could testify as to circumstances from which you, as a jury, might reasonably draw the inference that the motor vehicle passed the stop sign without stopping. He might say, while he was talking with me his eyes turned to the right. He saw the defendant's motor vehicle, the 1977 white Cadillac, traveling about 70 miles an hour, pass behind him. He didn't see it again until he noticed it when he turned to the left and he saw the motor vehicle about two or three seconds later, after it traversed about 150 feet, traveling at the same speed and struck the

Plaintiff. Now you have the circumstances, and if you credit the testimony you'd believe the motor vehicle traversed about 150 feet in two or three seconds. When he first saw it, it was traveling at 70 miles an hour. When he next saw it, it was traveling at 70 miles an hour and, I think based on your good common sense and experience, you would infer that that motor vehicle passed the stop sign without stopping. So, there you have it, the same disputed fact proved by direct evidence and indirect or circumstantial evidence.

The law does not regard one form of evidence as being of better quality than the other. At times, direct evidence is of better quality. At times, circumstantial evidence is of better quality. The important thing to remember is that the Government must prove guilt behond a reasonable doubt both on direct and circumstantial evidence.

In this case, we have questions on state of mind. Well, state of mind means what was the particular individual's thinking at the particular time. I think it's obvious to you that the only way it can be proved is by what the individual said and did. Those are the circumstances from which the Government calls upon you to infer criminal intent, and you must decide whether the Government proved criminal intent beyond a reasonable doubt on the circumstantial evidence.

I used the term inference and I used the term presumption. An inference is a conclusion which reason and common sense lead a jury to draw from the facts which have been established by the evidence in the case. The jury has discretion in drawing an inference. A presumption, on the other hand, is a conclusion which the law requires a jury to make and continues only so long as it is not overcome or outweighed by evidence in the case to the contrary. But unless and until the presumption is so outweighed, the jury is bound to find in accordance with the presumption. The example of that, of course, is the presumption of innocense.

You should remember, you the jurors are the sole judges of the credibility of the witnesses, which means the believability of the testimony and the weight their testimony deserves. Scrutinize the testimony given and circumstances under which both witnesses have testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, his motive and state of mind. Why is he testifying the way he is testifying; his reasons for testifying. Take into consideration his demeanor and manner while on the stand. Is he testifying fully, directly? Is he evasive in the manner in which he is testifying? Take into consideration the witness' own ability to observe the matters to which he has testified. Whether he shall have impressed you as having an accurate recollection of these matters. Take into consideration the relation that each witness might bear to either side of the case. The manner in which each witness might be affected by the verdict. The extent to which, if at all, each witness is either supported or contradicted by other testimony in the case.

If a witness is shown to have knowingly testified falsely concerning a material matter before you, you have the right to distrust all such witness' testimony, or you may decide to accept so much of it as you recognize is credible. That principle underscores the wide discretion the jury has in assessing the credibility of witnesses.

We'll shortly turn to the indictment. An indictment is merely the method of bringing a defendant into court to answer charges. The allegations of the counts of the indictment are not to be considered by you as proof; proof comes through the evidence at the trial. You are not to attach any significance to the fact that the indictment is brought in the name of the United States. The prosecution and the defendant are equals in this court. The obligation of the prosecution and the rights of the defendant are not to be reduced because the prosecution is by the United States of America.

In assessing the credibility of Mr. Goodwin, you may take into consideration the fact that he was convicted of a felony. The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony; that is a crime punishable by imprisonment for a term of years. Prior conviction does not render a witness incompetent to testify, but it's merely a circumstance which you may consider in determining the credibility of the witness.

(continued next page)

THE COURT: (Continuing) It is the province of the jury to determine the weight to be given to any prior convictions as impeachment. You may also consider the fact that Mr. Goodwin acted as an informer when he had the tape or when he taped the conversation.

The testimony of a witness who provides evidence against the defendant for pay, or for immunity from punishment, or for personal advantage or vindication must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. You must take into consideration, also, that Mr. Goodwin was an accomplice; he participated in the crime charged. Mr. Goodwin was not incompetent to testify because of his participation in the crime charged; on the contrary, the testimony of an alleged accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty even though not corroborated or supported by other evidence in the case. However, the jury should keep in mind that such testimony is always to be received with caution and weighed with great care. You should never convict a defendant upon the unsupported testimony of an alleged accomplice unless you believe such unsupported testimony to be true beyond a reasonable doubt.

Now, we'll go to the indictment. In this case, the indictment carries an introduction, and the introduction necessarily refers to the charge against this defendant that was tried on February 19th and 20th of 1975, only because it's necessary that you understand what was material in that case so that you can better understand as to whether he knowingly lied under oath on February 20, 1975.

It reads as follows: "On the 19th and 20th day of February, 1975, the criminal case of the United States v. Alfred Fayer, Criminal No. 75-CR-43, was tried before the United States District Court for the Eastern District of New York on an indictment charging the defendant Alfred Fayer with corruptly endeavoring, in February of 1972, to influence Edward Goodwin, a witness in a pending grand jury proceeding, to remain silent in connection with the grand jury investigation in violation of Title 18, United States Code, Section 1503.

It was material to the aforesaid trial to determine among other matters: (A) Whether or not in February 1972, Alfred Fayer had endeavored to influence Edward Goodwin not to testify voluntarily before the grand jury; (B) whether or not in February 1972, Alfred

Fayer had so acted with corrupt motive or intent; and (C) whether or not in February of 1972, Alfred Fayer, an attorney, discussed with the witness Goodwin and Fayer's client, Harry and Rose Bernstein, accusations or allegations that Harry and Rose Bernstein had paid bribes to Goodwin."

If I were asked to describe as briefly as possible what these charges are about, I think I could say with a fair degree of accuracy, it is charged that this defendant in testifying on February 20, 1975, lied under oath as to what the state of mind was of the Bernsteins and himself in the conversations, or conversation conducted and taped on February 9, 1972. I will charge you specifically on what the indictment says.

I'll start with count 1, and first I'll charge you on count 1 as if it were the only count in the indictment, and then I'll tell you how the others vary in the essential elements of the crime charged from count 1.

Now, count 1 charges (1) on the 20th day of February, 1975, within the Eastern District of New York, the defendant Alfred Fayer, while under oath as a witness in the aforesaid trial before the United

States District Court for the Eastern District of New York, did knowingly make false material declarations as follows:

"Q" which means "Question: Mr. Fayer, I refer you to page 27 of the transcript, top of the page, the second statement you made (to Goodwin): 'This is the thing. Now, the answer is here, what do you gain? And that's the real, thats the real $64,000 question. What do you gain? You can only lose. You can't gain.'"

The question continues: "Is that the advice you gave to Goodwin concerning his testifying and cooperating with the Government, Mr. Fayer?

"Answer" -- and this is what he is charged with specifically, his answer to that question:

"Not insofar as his testifying. Insofar as his answering any questions with the FBI, the FBI, it's my understanding they're not empowered to make any deal or negotiation with him. He had nothing to gain by saying a word to the FBI."

And this is the second answer to the question which the Government charges is false in count 1.

"THE COURT: Now, at the bottom of the page, then, you say, 'Somebody, this is why I am here tonight.' There that night to prevent Goodwin from talking?

"THE WITNESS: No, sir. Goodwin had said that he was considering cooperating and this is what I was told. And my advice to him would have been not to cooperate at the FBI level. That's why my feeling was he asked for the advice and that's why I was there that night. That's why I told him if he does, he is going to have the beginnings of a case."

No. 2. The aforesaid declarations were false, as the defendant Alfred Fayer then and there well knew and believed in that the said Alfred Fayer was at the February 1972 conversation to, and did, endeavor to influence the witness Goodwin not to testify voluntarily before the grand jury, in violation of Title 18, United States Code, Section 1623.

So, the Government charges that one or both of those answers to those questions were false.

Now, I think one of the lawyers argued that the other conversations that you heard on the tape have little to do with the charge. Of course, if he lied in any other part of the tape not covered by any of the four counts in the indictment, you may not base your verdict on those conversations. Those conversations are in the record so that you may fairly understand and interpret the answers given to the conversations charged in count 1 and the other counts. In other words, they're properly admissible as evidence, but evidence of what was meant by the answers to the questions as charged in count 1.

The Government must prove the following essential elements of the crime charged in count 1:

One, that in the trial of the United States v. Fayer conducted in this court on February 19th and February 20, 1975, charging the defendant with corruptly endeavoring to influence Edward Goodwin, a witness, the defendant testified under oath as set forth in count 1, and I read those questions and those answers.

Two, that one or more of said declarations were false, in that he stated to the Court that he did not endeavor to influence Goodwin not to testify voluntarily before the grand jury.

Three, that in making the said false declarations, the defendant acted knowingly.

In charging a felony, there are two ingredients: One is the proscribed, which means the prohibited conduct, and the other is criminal intent. The proscribed conduct here charged is testifying falsely. The criminal intent is knowingly testifying falsely.

Now, what I had intended to do was read the statute under which this defendant is charged. Almost all our federal law is codified and this is Title 18, under the heading, "Crimes and Criminal Procedures," and 1623, upon which the charges in this indictment are based, states in pertinent part:

"Whoever, under oath, knowingly makes any false material declaration," commits the crime under this section. Knowingly makes any false material declarations.

The materiality of the matter involved in the alleged false testimony is not a matter with which you are concerned, but rather is a question for the Court to decide. You are instructed that the questions asked the accused before the United States District Court, as charged in the indictment, concerning his testifying constituted a material matter in that trial.

The defendant may not be found guilty of perjury simply because he gives testimony which is factually incorrect. He may have given incorrect testimony because of surprise, confusion, haste, inadvertence, honest mistake as to facts, carelessness or negligence. However, in determining whether he was confused, didn't understand the question, mistaken or surprised, you may take into consideration the defendant's background and training as a lawyer. As has been said, you may not find him guilty unless you find beyond a reasonable doubt that the giving of false testimony was willful and that the other elements of the offense are present.

The Government must prove beyond a reasonable doubt that the statements under oath were made voluntarily and intentionally, and it must prove beyond a reasonable doubt that the defendant understood the questions as propounded to him, and that he was aware that the answers to the questions were untrue, and that he nevertheless, deliberately and intentionally gave false answers to the questions. The Government must prove the false testimony was not given because of surprise, confusion, haste, inadvertence and honest mistake as to the facts, carelessness or negligence.

Now the following charges refer only to count 1. The Government must prove beyond a reasonable doubt that the one or more statements relating to the charge in count 1, that the defendant corruptly endeavored to influence Goodwin not to testify befora the grand jury, was made by the defendant, knowing at the time it was intended to influence Goodwin not to testify voluntarily before the grand jury. It is not a violation of

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Title 18, United States Code, Section 1503, to charge corruptly endeavoring to influence Goodwin, to attempt to influence Goodwin not to talk to the FBI.

Now we go on to count 2.

Count No. 2 charges, and the first paragraph of count 2 is exactly the same as count 1 and counts 3 and 4, the first paragraph of those counts are exactly the same as count 1.

"On the 20th day of February, 1975 within the Eastern District of New York, the defendant Alfred Fayer, while under oath as a witness in the aforesaid trial before the United States District Court for the Eastern District of New York, did knowingly make false material declarations as follows:

"'THE COURT: Then you say, "I tell you this and I can assure this. That these two (Harry and Rose Bernstein), as far as anything is concerned, will not talk."'"

This is the question: "Now, in the context --" and I think we all agree it should read, "didn't you mean with respect to accusations that the Bernsteins were paying Goodwin?

"THE WITNESS: No, I don't think so."

The other statements made in answer to a question put by the Assistant United States -- by the Court, rather, is as follows:

"THE COURT: Weren't they talking on page 88 and 89, about accusations or possible accusations that the Bernsteins were paying to Goodwin?

"THE WITNESS: No, your Honor. I don't see that context.

"THE COURT: When Harry Bernstein says at the bottom of page 89, 'We don't know what you are talking about' he may mean (Rose) and Harry Bernstein and by 'you' mean Goodwin.

"THE WITNESS: I don't think so, your Honor."

No. 2.

"The aforesaid declarations were false, as the defendant Alfred Fayer then and there well knew and believed, in that the said Alfred Fayer and the other parties to the February 1972 conversation were discussing accusations and allegations that Harry and Rose Bernstein had paid bribes to Goodwin."

And now, just as in count 1, the essential element is exactly the same, in that one, in the trial of the United States v. Alfred Fayer conducted in this court on February 19th and 20, 1975, charging the defendant with corruptly endeavoring to influence Edward

Goodwin, a witness, the defendant testified under oath as set forth in count 2. No. 2, that one or more of said declarations were false, and the defendant stated to the Court, that in the conversation of February 9, 1972, he did not understand that the parties to the conversation were discussing allegations that the Bernsteins paid bribes to Goodwin, and that his statements at the time did not refer to bribes paid by the Bernsteins to Goodwin.

The third element of the charge in count 2, three, that in making the said false declarations the defendant acted knowingly and all of the principles I gave you concerning what knowingly means, of course, apply to count 2 as stated to count 1.

Count 3. "No. 1. On the 20th day of February, 1975, within the Eastern District of New York, the defendant Alfred Fayer, while under oath as a witness in the aforesaid trial before the United States District Court for the Eastern District of New York, did knowingly make false material declarations as follows:

"'Question: Page 68 of the transcript, Mr. Fayer, down at the bottom of the page where Mr. Bernstein states: "If you say anything, it blows everything."

"'Were you present when that statement was made, Mr. Fayer?

"'Answer: I really don't know. I think so but I don't remember. I am going back -- I don't remember having left. I would assume I was present.

"'Question: Right above, where Mr. Bernstein says, "I am working behind the scenes" throughout this conversation, Mr. Fayer, throughout those statements by Mr. Bernstein, what did you believe it to be referred to?

"'Answer: It to be referred to? One of the questions was to how far the grand jury had been progressing with Eastern, and naturally Harry Bernstein was speaking to everyone of the lawyers involved to find out what they knew, if anything. He was definitely working on that.

"'As far as "If you say anything, it blows everything," if Goodwin says anything he would be finished.

"'Question: Who would be finished?

"'Answer: Goodwin.

"'Question: So it is your statement that Harry Bernstein was not referring to himself but referring to his respect and concern for Mr. Goodwin?

"'Was that your understanding of what Mr. Bernstein meant?

"'Answer: Yes, that was my understanding. The Bernsteins constantly denied giving the man anything.'

"No. 2. The aforesaid declarations were false, as the defendant Alfred Fayer then and there well knew and believed, in that the said Alfred Fayer understood that when Harry Bernstein said in the February 1972 conversation that if Goodwin talked it would 'blow everything,' Bernstein was referring to among others Harry and Rose Bernstein and Eastern Service Corporation.'"

As to count 3, the first element is exactly the same as count 1 and 2, and in the trial of the United States v. Alfred Fayer, conducted in this court on February 19th and 20, 1975, charging the defendant with corruptly endeavoring to influence Edward Goodwin, a witness, the defendant testified under oath as set forth in count 3.

Two, that one or more of said declarations were false, in that the defendant stated to the Court that he understood that when Harry Bernstein stated, "It would blow everything," that Bernstein meant that it would implicate the Bernsteins and Eastern Service

Corporation.

Three, in making the said false declarations, the defendant acted knowingly, and again I ask you to recall everything I said with regard to criminal intent and what the Government must prove in order to show that the statements, if you find them to be false, were made knowingly.

Count No. 4.

"On the 20th day of February, 1975, within the Eastern District of New York, the defendant Alfred Fayer, while under oath as a witness in the aforesaid trial before the United States District Court for the Eastern District of New York, did knowingly make false material declarations as follows:

"'Question: Throughout this transcript you make numerous -- in fact on numerous occasions you stated in the transcripts to have his (Goodwin's) attorney stay out of the case. Do no investigating; is that right?

"'Answer: I don't recall no investigating. I certainly felt his attorney had mis-advised him and should stay out of the case at that stage. No question about it.

"'Question: Bottom of page 50, starting with Rose Bernstein:

"' But tell him not to do any investigation (inaudible).

"' HARRY BERNSTEIN: Don't do any investigating on his own, don't do anything. Just don't worry.

"' FAYER: Please stay out of it. Please.

"' GOODWIN: Stay out of it.

"' FAYER: At the point, the point --

"' ROSE BERNSTEIN: Tell him not to do any investigating.

"' HARRY BERNSTEIN: You can tell him it may be dying down.

"' FAYER: Right. Yes, but if you are subpoenaed --

(continued next page)

THE COURT: (Continuing) "' Again, on other pages and this page, Mr. Fayer, there are numerous references to having his (Goodwin's) attorney stop an investigation. What was your purpose in offering and giving that advice to Mr. Goodwin?

"' Question: Whom were you addressing this remark to, Mr. Fayer?

"' Answer: Please stay out of it," was Rose Bernstein. She had no right to tellhim not to do any investigation.'"

"The aforesaid declarations were false, as the defendant Alfred Fayer then and there well knew and believed, in that the said Alfred Fayer in the February 1972 conversation was addressing the remarks, 'Please stay out of it' to Goodwin to tell his attorney that the attorney should stay out of any investigation, andwas not addressing the remark to Rose Bernstein."

The essential elements in count 4:

One, as in counts 1, 2 and 3, that in the trial of the United States v. Alfred Fayer conducted in this court in February, February 19 and 20, 1975, charging the defendant with corruptly endeavoring to influence Edward Goodwin, a witness, the defendant testified under oath as set forth in count 4.

No. 2, that one or more of said declarations were false in that the defendant stated to the Court, when defendant stated, "Please stay out of it," he addressed the re[illegible] Rose Bernstein and not to Edward Goodwin.

Three, in making said false statement, declaration, the defendant acted knowingly.

I again call your attention to what I charged you on first, in that if you find the statements are false and, second, the Government must prove beyond a reasonable doubt that it was knowingly made.

Those are the essential elements of the crime as charged. Take each charge separately as if it were a separate trial and see if the Government sustained its proof as to each count.

Your verdict as to each count must be unanimous. Each juror must examine the evidence, discuss the evidence and decide the case through his or her own mental processes. You can't rely on the other jurors. You also have the obligation of exchanging views with the other jurors. You also have the obligation of deciding the case for yourself. It would be improper for any juror to come into the jury room and, in effect, say, "I'll go along with whatever you say, or what the majority says." It would also be improper for any juror to take an intransigent position, an inflexible position and refuse to discuss the case with the other jurors.

During your deliberations you might want to listen to the testimony or the tapes, or a part of the tapes. All your notes to me must come from your Foreman, and I ask you to be as specific as you can. If you want any of the testimony, tell me which witness' testimony that you'd like me to read back and I'll have that done. If you want the exhibits -- I don't know that there are any other exhibits, but the tapes are there.

THE CLERK: There is a business card, your Honor.

THE COURT: That's the only other exhibit, tapes and a business card. If you want to hear the tapes, it will be heard here in open court. I would like any questions that you have to come through your Foreman.

Your deliberations are a secretive process and you should not reveal how you stand at any time during your deliberations. Don't tell me that you're six to six or ten to two, or eleven to one. When you have arrived at a verdict, just say, "We have arrived at a verdict." Don't tell me what your verdict is.

If I get that note stating you have arrived at a verdict, I will call you into the courtroom. I will ask the Foreman then to stand and in fact, I will say, "In the case of the United States against Alfred Fayer, how do you find the defendant as to count 1, guilty or not guilty," and I'll hear what you have to say. I will then go to count 2, "How do you find the defendant as to count 2, guilty or not guilty," and I'll cover all four counts.

I will then turn to juror 2 and say, "You have heard the verdict as rendered by the Foreman. Is that your verdict?" And then I will go down to the twelfth juror, and if all the twelve jurors agree here in open court on the verdict, then for the first time it becomes a verdict of this case, not before. So don't tell me how you find the defendant when you send your note in to me.

I would appreciate it if you would leave the court at this time. I'll call you back in the courtroom in just a few moments, but please don't start your deliberations as yet.

The jury is excused.

ALTERNATE NO. 1: Your Honor --

THE COURT: You can't talk to me privately. It will have to be with the lawyers present.

(Jury leaves courtroom.)

THE COURT: I think he has counted the number of jurors and when I said "twelve," he probably wants to know when he is going to be excused, but he'll learn that soon.

The one thing I did not charge was the defendant taking the witness stand and his testimony should be judged like any other witness. That's all I'll say about it, if you want it.

MR. KORSHIN: No.

THE COURT: I really charge what the witness is judged by, and I said there were two witnesses, and the reason I did that, I use the form from the last trial and that lawyer didn't want the charge in at all.

Do you have any exceptions to the charge, Mr. DePetris?

MR. DE PETRIS: No, your Honor. Just two or three things that I would like to point out: I think they are minor matters at this point. But if the question should come up again during the course of their deliberations, one, at the beginning of the charge you were talking about the presumption of innocence and that it stays with the jury throughout their deliberations. That, I submit, should have been qualified that it stays with the jury --

THE COURT: Unless it's overcome. I didn't say that. I think it's implicit. In all of the trials I have, this is probably the first time I didn't use that phrase and I usually say it gives way, if and when the Government proves guilt beyond a reasonable doubt.

MR. DE PETRIS: And I should like to call to your Honor's attention, in case it should come up again, I really don't think it's necessary to re-charge them on the point.

Secondly, when your Honor was discussing a portion from Section 3307 of Devitt & Blackmar, the mere factual error and not perjury, you said you may not find him guilty unless you find beyond a reasonable doubt that the giving of false testimony was willful. I point out it should have been "was knowing."

THE COURT: Knowingly, I agree.

MR. DE PETRIS: I believe it was charged in --

THE COURT: Yes, the statute says "knowingly." It doesn't say "willfully." You're absolutely right.

But in describing knowingly, I never describe willfully in describing knowingly.

MR. DE PETRIS: I don't even think the jury would have picked it up, and I am not asking for a re-charge, but if you have to give it again, I wish you would charge --

THE COURT: If I have to give it again, you remind me and if you don't, I'll probably make the same mistake again.

MR. DE PETRIS: The only other comment was again on request No. 5 of mine, the defendant as a witness.

THE COURT: I will not charge that you must take into consideration the substantial interests that the defendant had in the outcome of the trial, citing it's the case --

MR. DE PETRIS: There are a couple of recent Second Circuit cases, your Honor --

THE COURT: Next door or across the aisle, Judge Platt gives it. I don't give it. I don't think it's fair in spite of the approval, only because it seems to say -- it's tough to convict, so you must understand our problems.

MR. DE PETRIS: I think the charge as I had it in the request was for further balance, your Honor, and I, again, I wouldn't ask your Honor to give it at this point in time, if you arereluctant to do so. But if it comes up again in contrast with the charge that was given as to Goodwin's credibility, it isn't really an issue in the case and it should be balanced by --

THE COURT: It's true, but there were one or two places where it could have beenin issue. For example, what did you understand him to mean, you know? I thought of those few places. I realize it's practically the tapes that will acquit or convict and I don't think Goodwin's testimony is important at all, except maybe in another instance, but that one instance alone, I don't think it's necessary.

Is there anything else?

MR. DE PETRIS: That's all I have, your Honor.

THE COURT: Do you have anything?

MR. KORSHIN: Yes, your Honor. I have a comment that I wish to make and then I have some specific requests, if your Honor pleases.

Your Honor charged that Goodwin was an accomplice in the crime charged. Now, I don't think your Honor really meant that and it might mislead the jury into believing that the crime charged here is something different from what is actually charged, in that Goodwin was --

THE COURT: He is an alleged accomplice in the corruptly endeavoring -- no, I'm sorry, you're right.

MR. KORSHIN: Not even in --

THE COURT: No, not really an accomplice.

MR. KORSHIN: I think the charge could confuse the jury. It might sound on its surface that the charge was helpful to the defendant but I'm afraid it could be the wrong kind of help.

THE COURT: You're right. You're right. I don't know what I was thinking of. I believe Goodwin was an accomplice in the FHA fraud.

MR. DE PETRIS: That's probably what you meant, the FHA bribe.

THE COURT: What should I say?

MR. KORSHIN: Respectfully, point out to the jury that when you referred to Goodwin as having been an accomplice, you weren't referring to him being an accomplice to the crime charged here.

THE COURT: Or the other charge of corruptly endeavoring; do you want me to do that, too?

MR. KORSHIN: Yes, inasmuch as they might be confused by the statement that Goodwin is an accomplice, and Fayer is now being charged with a crime that Goodwin committed.

THE COURT: Right. Let me think about what I was going to say.

MR. DE PETRIS: What you were referring to was being an accomplice in the bribery.

THE COURT: Yes. First, I'll put it in a positive way; Goodwin admitted participation in the FHA fraud. He was classified as an accomplice to that crime. I do not mean to indicate that any crime was committed under 1503 as corruptly endeavoring to influence on the crime charged here.

MR. KORSHIN: I don't really think that goes far enough. I think you should continue at that point and say, "If what I said about Goodwin may have misled you, I want to make it clear" --

THE COURT: Tell me how I should tell them.

MR. KORSHIN: I think it should be clear that Fayer is in some manner here charged with the crime that Goodwin committed. I wanted to make it absolutely clear that Fayer is not charged with participating with Goodwin in any crime. He is charged with what is in this indictment and nothing else.

THE COURT: Well, that's true.

MR. DE PETRIS: I don't see how the jury could in its wildest imagination be confused by the --

THE COURT: I don't think so, either, but there is no harm in it, but I think it's true that --

MR. KORSHIN: I do have some requests with respect to additional evidence, your Honor. One, is that the proof on counts 2 and 3, the Government proof was wholly circumstantial and there is no direct evidence on those counts.

MR. DE PETRIS: That is not accurate, your Honor.

THE COURT: Wait now. What did you say?

MR. KORSHIN: I ask your Honor to charge that the Government's proof with respect to counts 2 and 3 was wholly circumstantial; there was no direct evidence.

THE COURT: Well, we may start getting into theoretical concepts here. The act of talking, making the false statement is direct evidence; it's right on the tape here.

MR. KORSHIN: There is no direct evidence of the falsity of the statement.

THE COURT: No, but the statement --

MR. KORSHIN: Then charge that there is no direct evidence that the Government, or proof of falsity of statements. It relies entirely on circumstantial evidence.

MR. DE PETRIS: You can't say that there is direct evidence on the case, that the testimony was false.

THE COURT: No, now we come into, as I say, theoretical evidence as to what is circumstantial and direct, and I decline to do it.

I told them the Government must prove on both direct and circumstantial, and I think that satisfies the statute.

MR. KORSHIN: I would except, and I would have at this point asked your Honor to charge what the law is, whether the proof depends solely on circumstantial evidence --

THE COURT: What do you say it is? This is a state charge, and I will deny to charge that. It's the United States v. Holland, but --

MR. KORSHIN: Your Honor has it in the request that I submitted to you.

THE COURT: Yes, circumstantial evidence is not reliable --

MR. KORSHIN: No, no, no.

THE COURT: -- and you can't have any --

MR. DE PETRIS: That's hypothetical.

THE COURT: Y u have to exclude every hypothesis of guilt and you have to absolutely be certain of the guilt before you find the defendant --

MR. KORSHIN: Your Honor, it doesn't go that far.

THE COURT: I won't charge them at all.

MR. DE PETRIS: The Second Circuit has rejected that time and again.

THE COURT: Sure. It's a state court charge. It's a charge of circumstantial evidence which is used in the state court. That's how I know about it.

MR. KORSHIN: On count 2-- no, count 1. I don't think your Honor's charge was sufficiently clear that what the Government had proved was that it was by these particular quoted statements of Fayer that he endeavored to influence Goodwin not to testify voluntarily before the grand jury, and that he may have attempted so to influence Goodwin by something else that he said, does not, at that February 9th meeting, does not entitle him to conviction on this count.

MR. DE PETRIS: Your Honor said that at some length, I believe.

THE COURT: I said it, but let me see what you have to say as to that one.

MR. DE PETRIS: Your Honor referred them to the other portion of the tape and said, "You can only consider that as evidence of what they meant."

THE COURT: I said that clearly, I believe.

MR. KORSHIN: I don't think it was clear enough.

THE COURT: It wasn't strong enough?

MR. KORSHIN: Not clear enough.

THE COURT: What do you want?

MR. KORSHIN: You must remember you are dealing with laymen. To lawyers it's clear, but to a layman it's a different story.

I ask your Honor to charge --

THE COURT: Wait, now. Again, on count 1 --

MR. KORSHIN: I ask your Honor to charge that in order to convict the defendant they must find that Fayer endeavored to influence Goodwin not to testify voluntarily before the grand jury, by the very words which are quoted in count 1, and that if he endeavored to influence --

THE COURT: Now you're really re-emphasizing the count that you said wasn't in the case, except as the issues related to both of these. Now we're coming to the position where I am telling the jury to try the endeavoring to corruptly influence --

MR. KORSHIN: No, no, your Honor. I don't think so at all. What I want your Honor to emphasize to the jury is the fact that Fayer may have attempted so to influence Goodwin by something else he said at the February 9th meeting, doesn't entitle them to convict him on count 1.

MR. DE PETRIS: Your Honor has said that.

THE COURT: I said it. I won't mind repeating it if it has some value, but I am concerned about confusing the jury.

Now when I started the charge, I started it in a different manner than I start any other charge. There was a previous charge and I wanted them to know, because I thought that it was important for them to know they weren't trying that case, and I tried to show the limited relationship that that case had to the charge of perjury, by showing what the issues were.

Now what you are trying to do is emphasize the issue and saying, look at these statements, do they show that corruptly influenced Goodwin, and that's not the question. Even if they didn't, they could be false --

MR. KORSHIN: No, they must be false in only that respect. That's all the Government charges in --

THE COURT: I say when I emphasized that I isolated it from the rest of the case.

MR. KORSHIN: I don't think so.

THE COURT: No, I'll decline to charge on that. I think it's confusing.

MR. KORSHIN: I respectfully except to that.

THE COURT: Yes.

MR. KORSHIN: On count 2, I ask your Honor to charge that the Government had to prove when Fayer said, "No, I don't think so, I don't see that context, I don't think so," that he did think so and that he did see that context.

THE COURT: Wait a minute. Let me get this right. When Fayer said, "I don't think so," the Government must prove Fayer knew that Bernsteins paid

Goodwin bribes; that's even stronger than what you wanted.

MR. DE PETRIS: Your Honor, that's not what the charge is, that he knew that the Bernsteins paid bribes. He knew they were discussing allegations as to the Bernsteins having paid bribes.

THE COURT: No, they were discussing allegations, that's Fayer --

MR. KORSHIN: Yes, that's all right.

MR. DE PETRIS: I would then also ask your Honor when --

THE COURT: Wait now. Now what do you want about two?

MR. DE PETRIS: Count 2, your Honor, as you recall, is the count which I made the argument at the very end of my summation about all of the contradictory, false contradictory statements that Mr. Fayer made, and I would ask your Honor to instruct the jury that they can consider in determining whether or not Mr. Fayer acted knowingly with respect to the count, consider whether or not he made contradictory statements with respect to that as to a bearing on his state of mind and consciousness of guilt.

THE COURT: I decline to make the third summation. I won't do it. I won't do it for you nor for him.

MR. DE PETRIS: It's a proper charge on the law, your Honor.

THE COURT: No, it's marshaling the evidence. I seldom marshal the evidence. I certainly won't do it in a one- or two-day trial, and I think it would be unfair for me to take into consideration the contradictions.

MR. KORSHIN: With respect to count 3, your Honor, I ask your Honor to charge the jury that when Mr. Fayer, that the testimony given by Mr. Fayer which is alleged to have been false, was Mr. Fayer's statement as to what he believed was in Harry Bernstein's mind, and that the jury must find he didn't believe that was in Harry Bernstein's mind when he gave that testimony.

THE COURT: Now the Government must prove that the defendant understood that it would implicate the Bernsteins, but testified that it would implicate Goodwin.

MR. DE PETRIS: Your Honor, I don't think implication is the right word. I think you should stick to the words that were used.

THE COURT: No, I think --

MR. DE PETRIS: Who he was referring to.

THE COURT: Well, the charge is that the defendant testified that when Bernstein said, "It would blow everything" --

MR. DE PETRIS: He was referring to blow everything as to Bernstein.

THE COURT: When Bernstein said, "It would blow everything," -- I won't be able to read my own notes here. "It would blow everything," what he believed was that it would implicate the Bernsteins.

MR. DE PETRIS: Blow everything as to the Bernsteins, without the word "implicate," blow everything could be a number of things beyond, specifically beyond implicating.

MR. KORSHIN: May I respectfully suggest the words, if your Honor please, that the jury should be charged with --

THE COURT: Wait now. I agree, when a defendant is charged with perjury in expressing an opinion, the jury must understand that he really didn't have that opinion and that's what was false, not that the opinion was false.

MR. DE PETRIS: I agree.

THE COURT: And that's the language I'm trying to get.

MR. KORSHIN: If you will charge that with respect to counts 3 and 4, he was asked in effect what his opinion was and they must find that he didn't have the opinion that he expressed. I'll be content with that, your Honor.

THE COURT: All right.

MR. KORSHIN: In both, your Honor.

THE COURT: Anything else?

MR. KORSHIN: No.

MR. DE PETRIS: One thing, your Honor, on count 2. When you re-charge --

THE COURT: No. Mr. Korshin agrees on counts 2 and 3. I'll say it just that way. In counts 2 and 3 he is charged with expressing an opinion and stating what he believed. The Government must prove as to each count, beyond a reasonable doubt, he didn't have the opinion or that belief.

MR. DE PETRIS: Fine.

THE COURT: Anything else?

MR. KORSHIN: No.

THE COURT: Seat the jury.

(Jury re-seated in jury box.)

THE COURT: I want to clear one thing up. When I charged you that Goodwin was an accomplice, of course, he was not an accomplice to the crime charged. I tried to tell you that Goodwin admitted that he participated in the FHA fraud by taking bribes; Fayer is not charged with participating in any crime committed by Goodwin.

Now in count 2, in the answer to a question the defendant said, "No, I don't think so." And later on, "No, your Honor. I don't see that context." And still later on, "I don't think so, your Honor."

In count 3 he is charged with stating that he understood or believed that when Harry Bernstein stated in the conversation on February 9, 1972, that if Goodwin talked it would blow everything, that Bernstein was referring to Goodwin.

In both of those charges, Fayer is charged with expressing an opinion and belief, or understanding. The Government must prove in the first instance, beyond a reasonable doubt as to count 2, that the defendant Fayer did not have such an opinion, and in the second instance, which refers to count 3, the Government must prove beyond a reasonable doubt that he didn't have that understanding or belief.

Shall I excuse the jury? Anything further?

MR. KORSHIN: No, your Honor.

MR. DE PETRIS: No, your Honor.

THE COURT: Now, at this point I am going to excuse alternates 1 and 2 because only twelve jurors can deliberate on a matter. So you are excused at this time with the thanks of the Court.

Would you please be good enough to take your personal belongings out of the jury room?

(Alternate jurors excused.)

(Courtroom Deputy swears in two marshals.)

THE COURT: I remind the jury of the oath they took when they were first sworn, and that was to render a true and just verdict, and in turn, that means a verdict based on the evidence in accordance with the law as the Court charged it, free of any bias, prejudice and sympathy.

The jury is excused for deliberations on the matter. Within the next few moments, my courtroom deputy or the marshals will hand you a menu as they did yesterday. Please make your choices so that we can get the orders in from the restaurant to supply it.

The jury is excused.

(Jury leaves courtroom.)

THE COURT: I assume you intend to remain in the courthouse?

MR. KORSHIN: Yes.

THE COURT: I will tell you when you will be released for lunch as soon as I see the orders coming in. You can have some extra time. It will probably be about 12:30.

Where will you be, Mr. DePetris?

MR. DE PETRIS: I'll be in my office or in the conference room next to my office. I'll give your Clerk my telephone number.

THE COURT: All right, fine. If you leave the courtroom, please tell the Clerk where you will be so that we can get you.

(Court recessed.)

(Time noted; 11:30 A.M.)

THE COURT: Do you have any objection to the transcript of February 9, 1972 going to the jury? That's what they had asked for.

MR. KORSHIN: No, sir.

THE CLERK: Note from the jury marked Court Exhibit 3.

THE COURT: Show them to Mr. Korshin and make sure that he agrees that that is what the jury asked for.

(Mr. DePetris enters courtroom.)

THE COURT: I have a note from the jury requesting the transcripts of the February 9, 1972 conversations. Mr. Korshin said he has no objection. Do you?

MR. DE PETRIS: Giving them the transcripts without the tapes?

THE COURT: That's all they asked for.

MR. DE PETRIS: You have no objection.

MR. KORSHIN: No, I have no objection.

MR. DE PETRIS: As long as it's clear on the record that Mr. Korshin is waiving any possible claim on appeal, since the transcripts are not really evidence, only to guide the jury.

THE COURT: As a matter of fact, they were marked in evidence.

MR. KORSHIN: They were marked as Exhibit 3A, I believe, and since I have no objection, I couldn't possibly raise the point on appeal.

MR. DE PETRIS: You might not be the attorney. You never know. We often hear claims on appeal and I just want to make sure that he has waived it for appellate purposes.

THE COURT: Even if it weren't marked in evidence, if they use it during the trial and ask for it, I would give it to them with the instructions, as when I charged them about what the evidence was, I said that there were two tapes but the evidence is what they heard on the tapes.

MR. DE PETRIS: There is a Second Circuit decision which addresses the problem of a jury having tapes in the jury room, without having heard the transcript, and it said that it was error.

THE COURT: You mean they had the transcript without --

MR. DE PETRIS: Having the transcripts.

THE COURT: You said the opposite.

MR. DE PETRIS: Having the transcripts in the jury room without the tape, withoutat the same time listening to the tape, and the Court said -- I don't remember the exact words, but the decision was in the context of it being an error. I don't think it held at that time that it was reversible error, but error.

(continued next page)

THE COURT: In those cases, it may have been in dispute about the accuracy of the transcripts.

MR. DE PETRIS: That's all I'm concerned about, your Honor.

THE COURT: Well, I've got a stack of cases on the use of transcripts in my card file, which I excerpted slip opinions on, and I'm pretty careful about giving transcripts to a jury, and when they give it, and how they give it. But I can tell you I have had cases that said it's not error to send the transcript.

MR. DE PETRIS: You can understand why I am going cautiously.

THE COURT: Accuracy is important, if there is dispute, why they should have one version and not the other.

All right, make sure, then, that they are the transcripts and Mr. Korshin has looked at them.

MR. DE PETRIS: Just February 9th?

THE COURT: Just February 9. Twelve unmarked copies, make sure they don't have any notations made by either lawyer.

MR. DE PETRIS: Here they are, your Honor.

THE COURT: Martin, turn them over to the marshals. Talking about accuracy, Mr. DePetris, would you please give the courtroom deputy your telephone number.

All right, gentlemen, please stay available.

(Court recessed.)

(Time noted: 12:40 p.m.)

THE CLERK: Note from the jury marked Court Exhibit 4.

THE COURT: The second note is they want the transcript of this Court trial. I'll explain to them that much of the transcript consists of the matters that were discussed outside of their hearing and I can't give them the transcript. If they want any testimony, we'll read it back to them.

Call the jury in, please.

(Jury seated.)

THE COURT: I am unable to turn over the transcript of this trial, and the transcript of the testimony substantially is what Mr. Goodwin testified to and Mr. Fayer testified to. The transcript, and I'm not sure that they're even available. I know that Mr. DePetris was reading from the testimony of one of the witnesses, but the transcripts include everything that was said, including what was said when I asked you to leave the courtroom. So, obviously, if I didn't want you to hear it then, I am not going to give it to younow.

If you want the testimony of either witness, just ask for it, or if you want any other exhibits, you can have them.

So with that information I excuse the jury. I might say, I am ready to excuse the lawyers for lunch because yours is to come in soon, and since they have to walk back and forth to the restaurant I'll give them extra time.

So if you have any questions you can send them in during this lunch hour. I'll get them, but I won't be able to do anything about them. When I get a note, I call the lawyers and tell them what the note is and then we talk about the note, and then I call you in. So, if you don't get a quick response during the next hour and a half, you will understand it's only because we can't give you any information. The jury is excused.

(Jury leaves jury box.)

THE COURT: Yesterday, I cut the lunch hour short and so I'll make up for it today.

MR. KORSHIN: What lunch hour was that, your Honor?

THE COURT: You remember yesterday --

MR. KORSHIN: I didn't get any lunch hour.

THE COURT: You had a lunch hour and I did not have any lunch. You probably ate all afternoon and I did not.

Try to be back here at two o'clock.

(Luncheon recess.)

(Time noted: 2:15 p.m.)

THE COURT: We have two notes. One, We would like to hear page 50 and 51, taped conversations February 9, 1972. They just want part of that.

MR. DE PETRIS: 50 and 51?

THE COURT: That's right. The other is a summary of both attorneys for count 1. I think what they want is the summations of both attorneys as to count 1.

I don't know whether you can take that out. You took them, Mr. Klimaszewski?

THE REPORTER: Your Honor, it would be virtually impossible for me to do that. I would have to read the entire summations of both attorneys and then pick out those portions which I felt pertained only to count 1. I don't think I could do that.

THE COURT: Didn't both attorneys say, "As to count 1"?

MR. DE PETRIS: I did not, your Honor. In fact, most of my summation was probably devoted to count 1, because that's probably the broadest count in the indictment involving the question of whether or not he endeavored to influence with respect to the grand jury or just to the FBI.

I did isolate portions of my summation to the other counts, but probably my whole summation was directed towards count 1.

MR. KORSHIN: It's true that I reached a point in my summation where I said, "Now let's talk about count 1" or something to that effect. But the mere fact that I said that at one point doesn't mean that what I said until I went to count 1, which was all of my summation with respect to count 1, because everything else I said applied to it.

THE COURT: Suppose I tell them that? They also testimony of witnesses in regard to count 1.

MR. KORSHIN: I don't know how we can segregate that, either.

MR. DE PETRIS: Goodwin is easy; he gave very little testimony, but actually I don't know how you would segregate it because it's practically -- I guess you could probably segregate Goodwin's because, as I recall all of the background testimony didn't necessarily, did relate to count 1 but in the case of Fayer, I think there is a lot of Fayer's testimony --

THE COURT: I understand that you ordered

Fayer's testimony?

MR. DE PETRIS: I ordered Fayer's.

THE COURT: Do you have a copy?

MR. DE PETRIS: I have my copy.

THE COURT: Do I have my copy? Do you know where it is?

MR. DE PETRIS: We could go over Fayer's testimony, but it would be helpful if they know what they wanted.

MR. KORSHIN: The difficulty I have is --

THE COURT: Well, why don't we --

MR. KORSHIN: Your Honor, my examination, my direct examination --

THE COURT: They are going to count 1 and then they are going to count 3 and count 4. That isn't unusual with juries.

MR. DE PETRIS: The other request, your Honor, for the pages of the tape 50 and 51, that relates to count 4.

THE COURT: Maybe they got the wrong page, then. I don't know, but it's not unusual for juries here to take the counts in numerical order.

MR. DE PETRIS: Maybe they even arrived at a verdict on 2 and 3.

MR. KORSHIN: The difficulty with reading

Mr. Fayer's testimony in count 1 is that there is no specific part of -- let me say that --

THE COURT: Suppose that I suggest to them we'll read the testimony of both witnesses; how long do you think that would take?

MR. DE PETRIS: Fayer was on the witness stand for about three hours.

MR. KORSHIN: It would take all day. We wouldn't even get finished in one day reading the testimony of all of them.

THE COURT: Well, then, shall I tell them we cannot segregate the testimony on count 1?

MR. KORSHIN: That would be my request.

THE COURT: It's an impossible task.

MR. DE PETRIS: Extremely difficult, and it would be helpful if they would make their request more specific.

THE COURT: All right.

THE CLERK: Judge, we have one more note.

THE COURT: Here's another one. Do you have the tape of pages 50 and 51? We have another note. It says, "Please give us Mr. Fayer's testimony in this trial concerning his awareness in 1972 and 1975 of the possibility of accusations that the Bernsteins were paying Goodwin in his testimony on examination by the prosecutor on Thursday afternoon."

That's pretty specific.

MR. DE PETRIS: That one I can locate very easily, your Honor.

THE COURT: Would you ask them to send the Court copy of the transcript, please? Call them up.

The note continues: From the transcript of the 1975 trial, the testimony immediately following the responses to the questions to the questions listed in count 2.

MR. KORSHIN: I read that.

MR. DE PETRIS: We can probably locate it from Mr. Fayer's direct examination.

MR. KORSHIN: I can check on that, if that is what I did, Judge.

THE COURT: Anyhow, on what page do you have Mr. Fayer's testimony concerning his awareness in 1972 and 1975 of the possibility of accusations that the Bernsteins were paying Goodwin?

MR. DE PETRIS: Your Honor, if they are referring to the portions of the transcript that I read to them in my summation --

THE COURT: Will you give your copy of the transcript to Mr. KOrshin so he can look at it and agree or disagree with what you say?

MR. DE PETRIS: Yes, your Honor. Pages 146 to 147 of the transcript, Judge. One reference is on page 91 and the other reference I read to them --

THE COURT: Show them to Mr. Korshin.

THE CLERK: Jury note marked Court's Exhibits 5, 6 and 7.

MR. KORSHIN: Will you read again what the note is with respect to this? I don't remember exactly what they said.

THE COURT: "Please give us Mr. Fayer's testimony in this trial concerning his awareness in 1972 and 1975 of the possibility of accusations that the Bernsteins were paying Goodwin. This is testimony under examination by the prosecutor on Thursday afternoon."

MR. KORSHIN: There is much more than three pages.

THE COURT: Look at it and you tell me what it is.

MR. KORSHIN: I would like an opportunity to go through it, and I can't pick it out without reading the whole of the cross-examination.

THE COURT: You will have to do the best you can. [illegible] am not going to sit here all afternoon and have you sit [illegible] and do it.

MR. KORSHIN: I cannot do it.

THE COURT: I'll just read what the prosecutor tells me and then you can look at it at your leisure, and then you refer me to any other pages and I'll be glad to read it.

MR. KORSHIN: What your Honor is about to do is very unfair to me. I have never seen this transcript and your Honor is asking me to accept Mr. DePetris' word that this is all there is.

THE COURT: You tell me what I am supposed to do. Should I refuse to give them the testimony or wait an hour or two until you read all the testimony?

MR. KORSHIN: I would ask your Honor to wait until I read his cross-examination and I will --

THE COURT: I won't do it. I'll call them in and read it and you can read the rest of it, and you can read it all at your leisure.

Are we ready? Do you have pages 50 and 51?

MR. DE PETRIS: Yes.

THE COURT: While this is going on, you look at the testimony and then refer me to any other pages.

Seat the jury, please.

Where does it start? On the top of the page where --

MR. DE PETRIS: On pages 50 and 51, your Honor.

THE COURT: I'm sorry. I see it.

(Jury is seated.)

THE COURT: I'll try to give you what you asked for in one of the notes.

"We would like to hear pages 50 and 51." You would like to hear that portion of the tape.

Now we are starting at what particular line? Right at the top, naturally?

MR. WILSON: I can start there, if you would like. I have the tape set up right now where Mr. Fayer says, "I was up front," which is about the middle of the page on page 50.

MR. DE PETRIS: I think your Honor, the jurors are nodding that that's the point where they would like it to start.

THE COURT: Where did you say it was?

MR. WILSON: The middle of the page, your Honor, where Mr. Fayer says, "I would say to you, your friend," at that point.

THE COURT: That's on page?

MR. WILSON: Page 50, your Honor.

So it's about the middle of the page, and I can play it now.

(Tape played.)

THE COURT: The next note talks about summary of both attorneys.

MR. DE PETRIS: Excuse me, your Honor, I think one of the jurors has a question. He seems to be raising his hand.

JUROR NO. 3: The last three lines again, please.

THE COURT: I didn't hear you.

JUROR NO. 3: The last three lines on page 50 again.

THE COURT: All right. Please locate it.

MR. DE PETRIS: Your Honor, it can be located and switched back and forth so that it would be played right over several times.

THE COURT: All right, the last three lines, then, on page 50.

(Tape replayed.)

THE COURT: Now, on the next note you have asked for the summary of both attorneys as to count 1, also testimony of witnesses with regard to count 1.

I have gone over your note with the lawyers and they both agree that it's impossible to segregate the arguments that each lawyer made as to count 1, and it's impossible to segregate the testimony as to count 1.

So, if you can be more specific, we might be able to comply with it. Otherwise, it would mean giving you the entire summation of both lawyers and giving you all of the testimony of both witnesses, and that would take at least a day. So if you can be more specific, we'll probably be able to comply with your request.

Now, the last note asks, "Please give us Mr. Fayer's testimony in this trial concerning his awareness in 1972 and 1975 of the possibility of accusations that the Bernsteins were paying Goodwin. This is testimony under examination by the prosecutor on Thursday afternoon."

This will be page 146 of the transcript of the testimony on June 16th.

MR. DE PETRIS: Your Honor, starting at about the middle of page 146, "By the way," and then down through to the last question on page 147, may be the portions they are referring to.

THE COURT: Well, I looked at the previous page. I thought that referred to it, but if you're satisfied to start on page 146 at line 14, it's all right with me.

(Court readsback testimony commencing on page 146, line 14 through page 147, line 18. Court then read from the transcript page 191.)

THE COURT: Does that answer the second part of the note, from the transcript of the 1975 trial, the testimony immediately following the responses to the question listed in count 2, and -- did you give me the page number on that?

MR. DE PETRIS: No, your Honor, we were locating the page.

THE COURT: All right, then, that's all we have at the present time. The lawyers are now looking for more testimony in order to answer your question in Note 7. The jury is now excused.

(Jury excused.)

(continued next page)

MR. KORSHIN: Yes, sir.

THE COURT: Have you, to this moment, found any more testimony relating to the other question -- and I have forgotten that other question.

MR. KORSHIN: I have not had the opportunity to do it and I have not yet found anything.

MR. DE PETRIS: Can I make this suggestion? I'm not completely clear in my own mind that what we read to them, I think, is what they wanted. I'm not clear in my own mind that it is. You might just read the note to them and ask them if they were given the --

THE COURT: You interpreted it in some manner.

MR. DE PETRIS: Yes, I did.

THE COURT: Here, you take my copy of the transcript, Mr. Korshin, and give Mr. DePetris his copy back.

MR. DE PETRIS: The note is a little vague, your Honor.

THE COURT: When they come in --

MR. DE PETRIS: Just ask them if there is anything else that they want.

THE COURT: I don't like to have discussions in open court. I would rather send them back and ask them to make it more explicit.

MR. DE PETRIS: My suggestion is to tell them to go back and if there is anything that they didn't have read to them, that complies with the note, that they should send out another note.

THE COURT: How do you know whether or not it complies, if you're asking whether any of the testimony they didn't hear complies?

MR. DE PETRIS: When they wrote the note they had an idea of what they wanted; they probably have an idea whether or not what was read to them --

THE COURT: I can ask them to be more explicit if they haven't received what they wanted.

MR. DE PETRIS: I'm having to interpret notes and it's not always easy to do.

THE COURT: Ask them to come in, Martin.

(Jury enters courtroom.)

THE COURT: This is the testimony that the lawyers think that you wanted when you asked for the testimony from the 1975 trial, immediately following the responses to the questions listed in count 2.

(Court reads from transcript, page 316 line 3 through page A317, line 16.)

THE COURT: The lawyers aren't sure that they understood the full meaning of your question, "Please give us Mr. Fayer's testimony in this trial concerning his awareness in 1972 and 1975 of the possibility of accusations that the Bernsteins were paying Goodwin." It may be they haven't given you the full answer to your question. If you don't think they have, please make your question a little more specific and we'll try to give you what you want. Do that in a note through your Foreman.

The jury is excused.

(Jury excused.)

THE COURT: I want the record to show when you first complained that you didn't have time, Mr. Korshin, it was twenty after two. It's now five minutes to three and I'm going to leave the bench and now your time can be fully occupied with this search and we will note the time that you had.

MR. KORSHIN: May the record please show that I have not had any time at all, between the time that I just raised the point and now, because I was listening to your Honor's reading to the jury. I was busy with Mr. DePetris in finding other parts of the record to answer the last question that you just answered for the jury, and not until now will I have had a chance to sit down and --

THE COURT: We are both speaking for the record, Mr. Korshin, and I have tried a few cases myself.

Let me state for the record that I saw you

MR. KORSHIN: I certainly have no objection to their having it.

THE COURT: I like the lawyers to know every note that I get.

MR. KORSHIN: Yes, sir.

(Court recessed.)

(Time noted: 4:20 p.m.)

THE COURT: Mark this note, please.

THE CLERK: Jury note marked Court Exhibit 9.

THE COURT: Mark this one, also.

THE CLERK: Note marked Court's Exhibit 10.

THE COURT: This is a note from Juror No. 5. She wants a number called, "Jim Todd, wife will stand in front of building and wait at 5:30." She apparently wants you to call and to tell her husband to wait in front of the courthouse.

The jury note which is marked Court's Exhibit 9 says, "The following is a question of law: Does merely taking" -- or that might mean talking, "to the FBI, Internal Revenue constitute an IRS investigation?"

Or "Would that only be possible after sworn testimony before a jury?"

I think they're referring there to Goodwin, I think they're asking if Goodwin told the FBI that he was taking bribes, would that constitute an IRS investigation or would it constitute an investigation only if he was before the Grand Jury?

MR. KORSHIN: I think the answer is that it could, if he told the FBI he had been taking bribes, and the answer is it could result in an investigation by the IRS.

THE COURT: It doesn't ask if it could result --

MR. DE PETRIS: An IRS investigation?

THE COURT: That's what they say.

MR. DE PETRIS: Or grand jury?

THE COURT: They are talking about bribes being reportable income. You see, in the conversation, if you remember, the Bernsteins said, "If you tell them about bribes you are not only liable to be prosecuted for taking bribes, but you may also have trouble with IRS."

MR. KORSHIN: It could be either way. In other words, if you, if a person tells the FBI someone took bribes, it could or could not result in an IRS investigation.

THE COURT: They say, does merely talking to the FBI about illegal revenue constitute an IRS investigation.

MR. KORSHIN: I think --

MR. DE PETRIS: What is the next thing?

THE COURT: It says, "Or would that only be possible after sworn testimony before a jury?"

MR. KORSHIN: They're asking if it's possible by talking to the FBI there could be an IRS investigation, or is that impossible, and could there be an IRS investigation only after talking to the grand jury? I think they're asking is it possible either way.

MR. DE PETRIS: Grand jury or jury?

THE COURT: It says "before a jury."

I think they mean grand jury.

MR. DE PETRIS: Neither one constitute an IRS investigation, but either could result in an IRS investigation. I don't understand their purpose behind the question.

THE COURT: Well, can I tell them that you can have an investigation without the grand jury receiving testimony and, on the other hand, you can have an investigation going on simultaneously with the grand jury investigation?

MR. KORSHIN: Or you can have a grand jury investigation without an IRS.

THE COURT: Well, without any law-enforcement agency conducting the investigation, of course, that's theoretically possible, though it rarely happens, and you know that.

MR. KORSHIN: I don't know.

THE COURT: Somebody has to have the information. If a private citizen comes in and says, "I have proof," those are isolated instances which are presented to the grand jury, but normally, it's the agencies that come into play here, such as the United States Attorney's Office and then they say, "Here's the evidence we have on him."

Am I right?

MR. DE PETRIS: It depends upon the circumstances, but yes. With the IRS, that's the way it works.

THE COURT: I'll tell them you can have an investigation without the grand jury being in it or part of it. You can have an investigation conducted by the IRS and at the same time a grand jury investigation, and you can have a grand jury investigation without the IRS investigating.

MR. KORSHIN: And you can have an IRS investigation if you talk to the FBI; that's what I think they are after.

THE COURT: They say does it constitute an investigation. Do you want me to say it can lead to it?

MR. KORSHIN: Yes.

THE COURT: Those are all true. I don't know how it helps either side here.

MR. KORSHIN: That's what they're after.

MR. DE PETRIS: Can we hear the words, I really don't see the significance of it.

THE COURT: "A question of law: Does merely" -- and I'm taking that to mean merely talking, "to the FBI about illegal revenue constitute an IRS investigation?"

Of course, it does not.

MR. KORSHIN: And then, continue.

THE COURT: Then I'll answer that as one question.

"Or would that only be possible with an IRS investigation?"

MR. KORSHIN: Yes.

THE COURT: "Or would an IRS investigation be possible only after sworn testimony before a grand jury?"

And I would say, "No."

MR. KORSHIN: They are asking, when they say, "Would it be possible only after sworn testimony before a grand jury," they are asking would it be possible if somebody talks to the FBI, and I think that is the question that they're asking and that should be answered, "It's possible in either circumstance."

THE COURT: All right, I'll do the best I can.

MR. DE PETRIS: In actuality, it's not a question of law. They say a question of law, but it's a question of facts, do they turn it over to the IRS?

THE COURT: They may ask me to define investigation so that they can determine whether an investigation was going on. It could be a question of law. The definition is a question of law, but this was an investigation and under the definition that I give them, it then would be a fact question.

Bring in the jury.

Wait. Wait a moment.

I think what I should do is really return this note and ask them to ask each question simply so that I will know what they are talking about, to bring this note out and ask specifically what they want to know. I think that would probably be abetter way of doing it instead of trying to determine what they are asking. It is a little confusing.

MR. KORSHIN: Fine. I don't think it's confusing, but I have no objection if your Honor wants to ask.

THE COURT: Do you want me to charge them substantially as Mr. Korshin has suggested?

MR. DE PETRIS: I really don't know, your Honor. I don't understand the note. Whatever your Honor wants to do.

THE COURT: All right. We'll make the most of it.

MR. KORSHIN: If your Honor charges that way, then you can ask them does that answer the question. If it does, fine.

THE COURT: I rarely ask questions in open court because that can initiate a whole cross-examination and confusion. I would like them to put everything in writing after they have thought of it, and then bring it out.

Bring in the jury.

(Jury seated.)

THE COURT: The note says a question of law: Does merely talking, and I imagine you meant to say, you must have misspoken. You probably meant --

JUROR NO. 1: I'm sorry.

THE COURT: Does merely talking to the FBI about illegal revenue constitute an IRS investigation, or would that only be possible after sworn testimony before a grand jury?

I am going to assume that what you're really asking is for a definition of investigation. The first part of it, "Does merely talking to the FBI about illegal revenue constitute an IRS investigation," so far as the answer, the answer is "No." The FBI is one agency, Internal Revenue Service is another agency. Sometimes the FBI conducts investigations and sometimes the IRS conducts investigations.

(continued next page)

THE COURT: (Continuing) So, talking to an FBI agent, and such, is not an IRS investigation.

Now the second part of it is what confuses me somewhat, and maybe that will require going beyond the limits of the question, "or would that only be possible after sworn testimony before a jury?" And I assume you mean grand jury.

You can have an investigation without the grand jury sitting and hearing the results of the investigation. You can have an investigation going on while the grand jury is sitting and hearing evidence on the same subject matter. You can have an investigation by the grand jury without an investigation by any agency, either FBI or IRS.

Now I hope that answers your questions. If it doesn't, I would appreciate your writing another question, or more questions and I'll try to answer them. I'd rather each question be simply stated so I know clearly what you mean, and then I think it will be easier to answer.

You see, when you ask me a question, if it isn't definite, I have opinions, and then I have an opinion by both lawyers who are again, adversaries, and each one wants the most favorable interpretation to his client, Mr. DePetris for the Government and

Mr. Korshin for the defendant. So, it's very importa you give me a question that clearly states the subject matter and the inquiry. I hope what I have said is helpful. The jury is excused.

(Jury excused.)

MR. KORSHIN: May it please the Court, I have an exception to state of what your Honor just told the jury. It is my belief that what the jury was asking, in light of the testimony in this case was could an IRS investigation ensue merely as a result of Goodwin's talking to the FBI, or can it ensue only in the event that he testified before the grand jury. That, I believe, is the only possible interpretation to be placed on the jury's question, and I don't believe your Honor's answer is correct, and I respectfully except to it.

THE COURT: Wait. Could an IRS investigation ensue from --

MR. KORSHIN: Merely as a result of Goodwin's talking to the FBI, or could it ensue only if and when Goodwin spoke to the grand jury.

THE COURT: Do you agree?

MR. KORSHIN: I think that's the interpretation of the question.

THE COURT: I don't think I have to answer possibilities here, but I am going to say that if that's what you agree with --

MR. DE PETRIS: I think your Honor answered the question satisfactorily, satisfactorily responded to the question and when you told them to be more specific in their questions, I think that was right. I didn't understand the question. The question didn't make sense.

THE COURT: Well, Mr. Korshin said --

MR. DE PETRIS: Merely talking to the FBI does not constitute an IRS investigation, and may or may not lead to the investigation.

MR. KORSHIN: But these are laymen and not lawyers.

THE COURT: I know that.

MR. KORSHIN: They don't phrase their questions in precise language, and in the light of the evidence in the case --

THE COURT: Could it lead to; how do I know what would happen? There are so many variables.

MR. KORSHIN: But it could or it could not.

THE COURT: From what I know about this Court, that the IRS agents are a pretty independent body and the only time you get a request for a grand jury to hear testimony is after they have completed an audit, and they then go to the United States Attorney and say, "We would like to proceed to the grand jury."

MR. DE PETRIS: It goes up to Regional Counsel and up through the Tax Division of the Department of Justice, and it's then returned to the United States Attorney, and even only this can be an IRS grand jury investigation.

THE COURT: I happen to know that there are many cases where the United States Attorney's Office does not want to pursue it, but the IRS insists.

MR. KORSHIN: That has nothing to do with the question. The jury has questioned, in the second part of the question, "Would that only be possible after sworn testimony at a grand jury?" They are asking is it possible that there could be an investigation by the IRS if Goodwin had talked to the FBI, and I think that is the question hasn't answered.

THE COURT: Could talking to the FBI lead to --

MR. KORSHIN: To an IRS investigation; that's the question.

THE COURT: I would say if Goodwin spoke to a stranger on the street and the stranger sent a letter to the IRS, the IRS decided to investigate, and it could lead to an investigation. So, in the sense that everything is possible, sure.

MR. KORSHIN: But the question is --

THE COURT: Is that what you want me to say?

MR. KORSHIN: I don't want you to say it in the sense that everything is possible. Considering what the testimony was in the case, there were statements made to Goodwin that if you talk to the FBI, this could result in the IRS investigating it. Did you pay taxes on the illegally received money, you know. The jury is asking, in my opinion, by this question, is that possible? Could such an investigation have ensued if Goodwin had given testimony to the FBI or would it have been possible for such an investigation?

THE COURT: We'll call the jury in and we'll ask them what the question is.

MR. DE PETRIS: "It could also be possible after sworn testimony before the grand jury," more likely it would be the U.S. Attorney.

THE COURT: Look, let's get the jury in.

MR. KORSHIN: It could be possible under either circumstances.

THE COURT: Call the jury in.

(Jury seated.)

THE COURT: Madam Foreman, did you intend to ask in the last question, whether Goodwin's talking to the FBI could lead to an investigation by IRS; is that the question?

THE FOREMAN: Yes, your Honor.

THE COURT: The answer is, "Yes."

JUROR NO. 5: That's what we wanted.

THE COURT: Anything else you want me to say?

MR. KORSHIN: No, sir.

THE COURT: The jury is excused.

(Jury excused.)

(Recess.)

(Time noted: 5:30 p.m.)

THE CLERK: Jury note marked Court Exhibit 11.

THE COURT: I have a note.

"May we leave at 5:30? We have not reached a decision as yet."

That's what I promised the jury and I am going to have to suspend. I'll tell them to come back tomorrow at 9:30. As you know, at ten o'clock, I have another jury coming in on the case that was delayed.

MR. DE PETRIS: Your Honor, may I request that your Honor inquire of the jury whether they have reached a verdict on any count? We could have at least a partial --

THE COURT: All right. I'll tell them that they have a right to return a verdict on any count on which they have reached a unanimous decision, but I leave it

"Your Honor, may we hear the tape of February 9th, 1972, top of Page 18, through Page 23? We would like to hear it twice.

"Also top of Page 89 through Page 92, twice, please.

"Thank you."

How long will it take you to set up for it?

AGENT WILSON: In a few minutes, your Honor.

THE COURT: Can you identify the pages quickly?

AGENT WILSON: Yes, your Honor.

THE COURT: It's remarkable how you can pick it out.

MR. DePETRIS: We have it calibrated, your Honor.

Your Honor, the second was Pages 89 through 92?

THE COURT: Yes.

MR. DePETRIS: That would present one minor problem--well, I will not characterize it as minor or major.

After the first few lines of the end of Page 90 is the end of reel one, so we will have to switch reels in order to continue.

THE COURT: Start over, please.

(Whereupon the tape recording is played to the jury twice, as indicated.)

THE COURT: The next three questions that you will hear again on the top of Page 89 through Page 92 twice.

MR. DePETRIS: Your Honor, when we get to the top of Page 90, two lines down, that ends the first reel, so we will have to switch it to the second reel.

THE COURT: All right.

MR. DePETRIS: Yes. So shall we play the first part twice and then switch it to the second reel and play that twice?

THE COURT: Yes, I think that will be more efficient.

(Whereupon the tape recording is played twice as indicated on the first reel.)

MR. DePETRIS: It will probably take about five minutes, your Honor, to rewind it and put on the other reel.

THE COURT: All right. You tell us when you are ready.

(Whereupon the second reel is prepared.)

THE COURT: We are ready now.

(Whereupon the tape recording is played on the second reel twice, as indicated.)

THE COURT: All right.

The jury is excused for continued deliberations on the matter.

(The jury leaves the courtroom at 10:38 A.M. for further deliberations.)

(Whereupon the proceedings are in recess awaiting further communication from the jury.)

(Court proceedings are continued without the jury at 11:40 A.M.)

THE COURT: Mr. Korshin, just as soon as you find out the lunch is here, you take your lunch. You may again miss out on your lunch hour. I know now how important the lunch hour is to you.

MR. KORSHIN: All right. It's not that important.

(Court proceedings are in recess awaiting further communication from the jury.)

(Court proceedings continue at 1:50 P.M.)

(The jury enters the courtroom.)

THE COURT: I have your note:

"Tape of February 9, 1972 on Page 50 starting with Mr. Fayer's statement, 'I would say to a friend,' and ending on Page 51, fifth line down."

The jury wants to hear it three times with a pause between each time.

We are ready.

Don't forget to turn the switches on.

THE CLERK: Marked jury note from jury Court Exhibit 14.

(Whereupon the tape recording is played three times as indicated.)

THE COURT: You may go back to the jury room.

(The jury leaves the courtroom.)

MR. KORSHIN: If your Honor please, I have a motion to make with respect to the fourth count.

Now that I have listened to this tape several times, I must confess that I, too, hear the statement, "Please stay out of it completely," instead of, "Please stay out of it please."

But when Mr. Fayer testified in the previous trial, he was not asked to whom the remark, "Please stay out of it completely," was addressed.

He was asked to whom he addressed the remark, "Please stay out of it, please".

And if he was asked to whom he addressed the remark, "Please stay out of it completely," his recollection might have been differently triggered. And there is a strong difference between the conversation at this point and the conversation of February 9th, please stay out of it, please, which could have been addressed to Rose Bernstein; or, "Please stay out of it completely," which more logically was addressed to Goodwin.

THE COURT: I don't know if it's true.

MR. KORSHIN: If your Honor would recall, when Mr. DePetris was summing up to the jury and made the statement that that's what was on the tape, please stay out of it completely, I was a little disturbed and I couldn't place in proper context the effect of that. And I think the effect if the jury is told what was said is, "Please stay out of it completely," the jury is then asked to consider a charge not in the indictment. It's an entirely different statement.

THE COURT: I don't know if it's entirely different.

MR. KORSHIN: Oh, it could have very well have been.

THE COURT: Everybody sees it differently.

What do you have to say about that record?

MR. DePETRIS: I don't see how it has one effect or another on the charge. The charge is there and the jury will enter its verdict accordingly.

THE COURT: There are other statements, as you pointed out, that are not parts of the indictment. And I charged them that it's only the statement in the indictment that counts.

MR. KORSHIN: Yes. And the statement in the indictment is not, "Please stay out of it--"

THE COURT: The point is, "completely," may just be evidence that he uttered the words, "Please stay out of it," and he directed it to Goodwin. And that doesn't change the nature of the charge at all.

MR. KORSHIN: Respectfully, I disagree and I take an exception.

THE COURT: Surely.

(A recess is taken awaiting further communication from the jury.)

MR. KORSHIN: I have motions, your Honor. Your Honor would not hear that at the end of the case.

THE COURT: Okay.

MR. KORSHIN: I renew all motions --

THE COURT: Did you say I would not hear the motions at the end of the case? Gee, that's surprising. I might have said I would extend the time.

MR. KORSHIN: Your Honor said, "I will hear the motions at the time of sentencing and you can put them in writing if you wish," but your Honor would not hear them at the time.

THE COURT: I made an exception for you, Mr. Korshin, because it's the usual time of making motions.

MR. KORSHIN: When I got up to make them, that's what your Honor told me.

My motions are to dismiss the indictment on all counts -- the indictment on all of the grounds stated during the trial which your Honor denied. I renew the motions.

In addition, I make the following motions: as respects Count 1, I move to dismiss the count on the ground that there is collateral estoppel and I base that on Judge Weinstein's finding on the previous trial -- I'll put it this way: had

Judge Weinstein found that the -- the defendant has already been convicted on inferences with Goodwin to not appear, he would have had to find them not guilty. Finding him guilty, they had to find Mr. Fayer did not do that and therefore there is collateral estoppel.

As To Count 2 and 3, those counts relate to whether Mr. Fayer at the time that he talked to the Burnsteins and was at this dinner meeting that was taped, whether he knew that the Burnsteins paid money to Goodwin, Mr. Fayer testified at the trial before Judge Weinstein that he didn't know it and Judge Weinstein specifically found that Mr. Fayer believed that what the Burnsteins had told him was truthful.

With respect to Count 4, I don't base the motion on collateral estoppel but I base it on the fact that the jury was permitted to consider a charge which was not in the indictment. That motion I made before arguments and I don't know whether your Honor quite appreciated what I was saying.

What was charged in the indictment was that Mr. Fayer had untruthfully said that the remark he made, "You stay out of it, please," was not made to Goodwin, or "Tell him to stay out of it, please," was not made to Goodwin but was made to the Burnsteins.

The United States Attorney was permitted, during his summation, to tell the jury if they listened carefully to the tapes, they would find that what Mr. Fayer said was, "Stay out of it completely."

There is a big difference between, "Stay out of it, please," and, "Stay out of it completely."

Had Mr. Fayer been told originally at the trial before Judge Weinstein that what was on the tape was, "Stay out of it completely," his recollectio might have been entirely different than what it was when he was told, as the transcript showed, "Stay out of it, please," and there was no suggestion at the trial before Judge Weinstein that the tape said anything other than, "Stay out of it,please."

THE COURT: All right, I think I gave my reason for denying the motion when you originally made it, and motions in all respects are denied.

I'll say something in the sentencing about the argument that you make on collateral estoppel. I think there is something to what you say, logically, but I don't think that it is sound as a legal proposition and I'll tell you why later.

Alfred Fayer, do you have anything to say before the Court imposes sentence?

statement and that is my belief.

THE COURT: I said I would say something about the argument that you made in your motion to dismiss Count 1, claiming that your not guilty verdict before judgment collaterally estops the Government from prosecuting on Count 1.

I am in agreement with you to the extent that in a sense it does seem that the Government had two bites of the apple, but my reading of the cases on the collateral estoppel and double jeopardy refer to the specific elements found, the ultimate facts found by the prior jury and they are not the same as in the second trial.

I know the consequences of a conviction of a felony and the disastrous effect it will have on this defendant. It appears that he was an honorable practitioner through all his years and who can tell what honorable practitioners would have done under these same circumstances?

The defendant is inexperienced in criminal law and the presentence report appears to be an indictment against him because he suggested to the informant that he'd dismissed an experienced criminal lawyer, but at this point, in sentencing, it may very well indicate his lack of understanding of his

GOVERNMENT'S EXHIBIT 3A

GOODWIN and ROSE and HARRY BERNSTEIN, 2/8/72

EDWARD J. GOODWIN: Boy, you need a shoehorn.

HARRY BERNSTEIN: What is that a (inaudible)

G: Huh?

ROSE BERNSTEIN: What is that (inaudible)

G: Nobody here. Where is it? Down on the bottom? Oh, here?

HB: Yeah.

G: No, that's, that's for the seat.

HB: (Inaudible)

G: When? Here's the button. Ha. Ha. Here we go. Somebody found it.

RB: (Inaudible)

G: Jesus, I can't

HB: Can you make it?

G: Well, I don't know that.

RB: (Inaudible)

HB: You'll find it up under the seat back (inaudible)

G: I have my pencil in my hat and damn near,

RB: Oh, I, all right.

G: Damned near stabbed myself.

A 284

(Inaudible)

HB: I'm not. It isn't

RB: Oi Vay let me leave my hat off, huh?

G: Oh boy. Huh?

RB: What's doing?

G: Let's get out of here.

RB: Anything doing again? Did they, uh

G: I went down to see my attorney, you know, latter part of last week.

RB: Yeah.

G: And I went back to see him again a second time.

RB: Yeah.

G: Since the weekend. I didn't go to work yesterday. That damn snow was too much. You, you take your life in your hands when you're driving in that damn snow in Brooklyn.

RB: Yeah.

G: So I got over to see him for a few minutes.

RB: So?

G: Well, he wanted to know everything that's going on. You know what went on and what didn't go on and what not. Now, he's known me for a long time and he represents me, so I ought to fill him in on some background material. Let him know exactly what he is up against. He says to me he wants to know exactly what happened. Did I ever accept any money? How much? Who I accepted it from. The whole bit.

RB: What did you tell him?

G: I was honest with him. I told him the truth.

HB: Did he

RB: You told him you did?

G: He represents me.

HB: Wrong.

RB: Wrong.

HB: Wrong.

G: Well, would do you mean?

HB: (Inaudible)

RB: (Inaudible)

G: He, he represents you. You, you gotta

RB: I'm sorry

HB: Wrong. I'm sorry, wrong, wrong, wrong.

RB: ED, you gonna put yourself in a noose.

HB: Wrong, ED.

RB: That's the worst thing you could have done.

HB: You're wrong.

G: Well look, he wants to know more, so this is what, one of the reasons I wanted to talk to you people.

RB: You don't

G: What do you, what do you tell him?

RB: What?

HB: You never got anything, which you never got.

RB: You don't. First. You don't need any attorney yet. This is what I wanted to tell you.

HB: We were up the, uh.

RB: Because I was up and spoke to my attorney.

G: Yeah

RB: Don't you see, they're digging and digging. Here's a man who never took five cents from anybody and we never gave him five cents.

G: Yeah

RB: And uh, FBI men came around and gave him a card and said, make a clean breast of things. Here's my card. When you're ready to talk,

talk. So he says, you, you shouldn't engage any attorney until you get a subpoena, if you get a subpoena. And if you don't talk, you wouldn't get a subpoena so fast. And if you got a subpoena.

HB: You take the fifth immediately.

RB: The answer is to take the fifth and the answer is, you never took anything from anybody.

HB: First of all

RB: And nobody ever gave you anything.

HB: Did we ever give you a check?

G: No.

RB: No.

HB: Did anyone ever give you a check?

G: No, you never gave me a check.

HB: Did you ever report anything that you've got money on income?

G: No

HB: So then you couldn't have taken it.

RB: You couldn't (inaudible)

HB: You couldn't have taken money.

G: Yeah, but look. Look, you know, you know ROLL (Phonetic) as well as I do

RB: Who?

G: KENNY ROLL.

RB: I don't know him.

G: Well

RB: I don't know him.

G: Well you, you know, you heard me mention him anyhow,

RB: Yeah

G: He's a good sharp attorney as far as I can see.

HB: I don't give a good Goddamn if he's

RB: I don't care

HB: We got a, we got a Judge RIFKIND (Phonetic) as an attorney, if you want to know the truth.

G: Yeah.

RB: He's one of the greatest.

HB: He is the greatest.

RB: He the KENNEDY'S, KENNEDY'S attorney.

HB: He is the greatest. Alright? Wait a minute, first of all, we've talked about this, when we get

RB: I never gave you five cents.

HB: First of all, secondly, you don't need an attorney until you're called down with a subpoena. Thirdly, this judge says under no circumstances did he ever, but did he ever give anyone permission to take and testify in, in the Grand Jury.

RB: Yeah.

HB: Once someone wanted to testify in the Grand Jury, he made this fellow, take the fifth, where he only wanted him to take the fifth, eventually he took the fifth. But he made this fellow who wanted to testify, that if he was going to testify, to sign the acknowledgement that over his protest to take, to that he was.

RB: That he took the fifth, that he, uh, talked.

HB: That he would testify.

RB: That he would testify.

HB: First, now you will never testify in the Grand Jury. You take the fifth amendment. If you have any attorney that says he doesn't care then he's not your attorney anymore. No attorney in their right mind would let you testify.

G: Now look

HB: In the Grand Jury. Now wait a minute. Let me finish

G: All right, go ahead.

HB: Secondly, we never gave you money, you never received money from us. I don't care who ROLLINS (Phonetic) is or what. See.

G: Uh-huh

HB: Was he at the transaction?

RB: I'm surprised at you.

G: No.

HB: Did you, did you pay income taxes on something that you didn't receive? Did you?

G: Well, how can you pay income tax on something you didn't receive?

RB: You could (inaudible) know what happened to you? You have no right to tell anybody anything. Nobody.

HB: I don't understand you.

RB? Nobody

HB: I thought you were a pretty smart fellow.

G: Well look, maybe I'm naive, but you, you doctor or your lawyer.

HB: Wrong.

RB: Did you ever, did you ever, no, no. Wrong.

HB: Wrong, wrong, wrong, wrong

RB: A doctor or what's, what's wrong with you is nothing.

HB: We never gave you any money. If you were on our payroll and we gave you a check every week and reported it and then reported it to the Internal Revenue, then you got to report these things.

RB: Did you tell the FBI men that you got money?

G: Of course not, I only saw them this one time. That's why I went to see ROLL.

HB: Your attorney I am sorry

RB: I'm sorry, but

HB: You did not get any money from us or anyone.

RB: Did you tell your attorney you got money from us?

G: Yes

HB: Wrong

RB: Wrong.

G: Because he's my attorney.

HB: Wrong

RB: Oh God, that's the worst thing you could have done.

HB: What's, what's the difference, he's didn't uh, he didn't say it. You tell your attorney you got confused in what you were saying. You did not say it.

G: Well.

HB: He says sure, who you're kidding. You tell him you didn't, you know, you know what you are by this?

G: Maybe I should put heads together with you and we will know what the hell we are talking about.

HB: All right then, I'll tell you. You got money?

G: Yeah

HB: If you got money from us, did you report it in the Internal Revenue?

G: No.

HB: You know, you know what you're up on? Say this whole thing is nothing and nothing.

RB: You could go to jail.

HB: An on Internal Revenue matter.

RB: You could, you could be put away. What's the matter with you, ED?

HB: What's the matter with you, ED?

RB: You could be put away.

HB: Did you report your Internal, uh, you got money?

G: No

RB: What's the matter with you?

G: So what do I do then?

RB: I would never tell them, ED.

HB: ED did you get

G: What do I tell them? You tell me.

RB: No

HB: You tell me you never got

G: We should get the stories together. You, you know we're talking the same language.

HB: You never got any, you never. All right, you never got any money from me.

G: Because

HB: You speak to him in person.

G: Yeah, I get con, I don't know whether you're you're saying that you didn't or what, or, or, or, or this is what we'll getting our heads together

HB: (Inaudible) What did we tell you the other day?

RB: (Inaudible) what did I tell you the other day? Didn't I tell you I never gave you anything. And you never got from me.

HB: You're the strong one. Always (inaudible) What happened?

RB: And it's your word against KAPRAKI?

HB: What happened?

G: Huh?

RB: What, did you ever take a check from KAPRAKI?

G: What are you crazy?

RB: Well so one mistake, KAPRAKI could say a million things that you did, you took. You never got anything from us. She's a goddamn liar.

G: Ah, she's a shithead anyhow.

RB: She's a liar.

G: Yeah, her, her I don't worry about she's a shithead. What

RB: So who are you worrying about? Me? Harry?

HB: I don't understand you. I do not understand you in my wildest

RB: We never gave you five cents.

HB: I never gave you a dime or I never did. I don't know where you ever got that idea from

G: All right, so, so what, so what do we do? What's going on?

RB: What do we do? Do nothing.

HB: What's going on? You tell your attorney.

G: Yeah.

HB: That you tell him you got confused in what he were saying. Did you write out anything for him?

G: What, are you crazy?

HB: No.

RB: Did he write anything?

G: No. No. He just

HB: You tell him

G: He sat at his desk, I was across the desk from him. We talked just like you and I are talking now.

RB: How do you know he didn't?

G: Huh?

RB: Sometimes they have recorders,

HB: He can't, he can't, don't mean a thing. You can't say anything ROSE that's perfect but you never got a dime from anyone, ED. You asked us that question

G: Now wait, let me ask you this.

HB: Wait a minute, go ahead. All right.

RB: But before we left, yeah

HB: Wait a minute, let him have ask, what

G: All right, so what's, what, what's going to be with this thing

HB: All right, let me tell you what's happened so far.

G: All right.

HB: Let me get you up to date. Let me talk here.

RB: They're fishing. In fact, I, you know what? HC doesn't want me to talk over the phone, but, uh

HB: The wires all, wire tapped.

RB: Yeah, the wires all tapped, but

G: Well, this is the first thing my lawyer told me. He says, you better assume that your phone is bugged right off the bat.

HB: Yeah. Now.

G: Yeah

HB: All right, you say what's happening

G: Yeah

HB: You know we, we've got RIFKIND, we've got attorneys

G: Yeah,

HB: Well, as soon as they get a subpoena, we got the attorneys. You, we can't get an attorney for you because you were never in our employ. See, we can't get physically in on things. Put it that way.

G: All right.

HB: This guy that you got, your, he's not your criminal lawyer. He had no right to get into these questions within. He's not handling you first criminally and you tell him that under no circumstances because if he's going to be co-counsel with a criminal lawyer that you don't know a hole from the wall. Foreget it! Forget it! You, so you tell your attorney, look, I'm going to recommend you a lawyer. Okay, but I told you

RB: He don't need any lawyer now.

HB: Let me finish. When

G: Yeah.

HB: When, when the, when the time comes I get a subpoena, I will let you know and then at that time you will get an attorney.

G: All right.

RB: That's right.

HB: See. Now, not before now, just like a ROY SCHILLER or a PAT BUCKLEY or anyone else.

G: Yeah

RB: Or a FRANK FEY.

HB: They didn't get their attorney until they were subpoenaed.

RB: They got a subpoena.

G: They were subpoenaed?

HB: They were subpoenaed.

RB: Yeah

G: When was this?

RB: They were subpoenaed before the Grand Jury.

HB: FRANK FEY went up there. We got him an attorney.

G: When you were there?

HB: No, we got an attorney in before Christmas we got for 'em.

RB: We got an attorney for him, we got an attorney for ROY SCHILLER.

HB: For PAT, PAT BUCKLEY.

RB: And PAT BUCKLEY, the one attorney

HB: And they all took the fifth amendment.

RB: And they all took the fifth.

G: Yeah.

HB: And FLORENCE BEHAR she took the fifth also.

G: Yeah.

HB: You got to take the fifth amendment. We're all up at Judge RIFKIND'S yesterday because we wanted him.

G: All right, now look. You guys are civilians and I'm, uh, I'm an employee of the Government right?

HB: Right.

RB: You're an employee of the government. You never got five cents from anybody.

G: But

RB: You do, you sink

G: But

HB: What but? What but?

RB: What but?

G: They have different rules for me than they do for you.

HB: What rules?

G: Don't they?

HB: What rules?

RB: What is, what is your rule?

G: Huh?

HB: What rules?

RB: No. What is your rule?

G: Well actually as a civilian, uh, as far as you people are concerned, they have to have proof and all this nonsense but as far as I'm concerned, is, isn't an accusation just enough?

HB: No, no sir.

RB: No, no

HB: What do you mean an accusation is enough?

RB: I can accuse you of killing a man

G: I mean testimony, you know.

RB: No.

G: Somebody says I

RB: No.

HB: Gave you? Who, KAPRAKI?

RB: Whose testimony?

G: Yeah

HB: KAPRAKI? Who is a dead beat.

G: You, any, anybody

HB: For we, we never gave you a penny

G: All right, anybody, whoever.

HB: We, no one ever gave you any money.

RB: I never gave you any money.

G: All right.

HB: No one ever gave you money.

RB: I never gave you money.

HB: Anyone who gave you money is, is said they're crazy. The only one that could have said it would be KAPRAKI, and she's a goddamn liar.

RB: She's a big liar. You never took five cents from her.

G: In other words, this is the way we, we, would stick, stick to our

RB: I told you that the last time

HB: This is the only way. I don't know where you got your...

G: All right.

HB: ED, your, your, uh, uh, uh, methodical guy brilliant.

RB: Brilliant guy, but I, I don't understand you

G: Yeah. Well I'll tell you.

HB: Strong as an ox, strong as I am.

RB: ED.

G: Uh, this, this week, frankly this week I've been upside down, completely mixed up.

RB: Well HC said to me, I don't want, I haven't seen HC.

HB: Was there anyone else that was, uh, the FBI went to?

RB: There was somebody else. There was one other, wasn't there?

G: I don't know, I don't know.

HB: All right

RB: There somebody else.

HB: You speak to your attorney in person. You call him before it gets any further.

RB: You know what, yeah.

HB: Not on the phone.

RB: You know what HC did?

HB: Does he live out there?

G: Yeah, sure. Right in the village.

RB: Did, why don't, did you tell HC?

G: Huh?

RB: Did you tell HC?

G: I told HC these guys came to see me.

HB: Right.

RB: Yeah

G: But that's it.

HB: All right, now let me tell you something, all right?

RB: You better do something. I'll tell you what you better do.

HB: You don't get any criminal lawyer and tell your attorney.

RB: You better confide in HC, but not in his office. you better go someplace, in a luncheonette with him, because

HB: And tell him you never got money. What the hell is the accusation

RB: Yeah, because he'll, he'll tell you what, he'll tell you better than anybody. He'll he said to me they're crazy. They're fishing. I hope he knows enough to keep his mouth shut. They're fishing.

HB: You, they can't do anything to you. All you do is take the fifth amendment and, uh, that's your privilege.

RB: you, they're accusing you of something?

HB: They, they're say if you, if you don't talk you will be fired. You say you have every right to take the fifth.

G: Who aren't they accusing.

HB: Who, they're accusing us too. They're accusing everyone.

RB: They're accusing

HB: You know, wait a minute. You know, wait a minute. You know what an allegation, you know what, uh, a subpoena and even an indictment would to come down from the Grand Jury. You know what that is?

G: No

RB: It's a charge.

HB: It's an allegation.

RB: That's all. It's a charge.

HB: That they say that you're guilty.

RB: That doesn't say you're (inaudible).

HB: Then you go to trial.

RB: Yeah.

HB: And it will never go to trial because it will be knocked out and plus the fact that it could drag for five years.

RB: I don't understand you, ED.

HB: I don't, I don't understand you. I

RB: How you could confide in anybody.

G: Well, you got to confide in somebody.

RB: No, nobody.

HB: Confide what. Did you get, did, show me your receipts.

G: Hm - Hmph.

HB: Show me your receipt. Show me your tax item.

G: Yeah.

HB: Show me your cash, your check deposit.

G: I see your point. I see your point.

HB: You got a bank deposit.

G: No.

HB: Public? So how could you have gotten it? Where did you get it? Where did you deposit the money?

RB: He put a noose right around his neck. Right around his neck.

HB: I'm amazed at you. You say, I got to tell my attorney.

RB: I'm surprised at you. I told you not to do anything. Didn't I?

HB: First of all, we never gave you anything.

RB: Until I got back to you. But the last thing I said to you, I, we never, gave you five, you never got anything.

HB: What did your attorney say? Tell me everything. Give me a clean breast. Oh, does he need all this crap.

RB: Tell me everything. Give me a clean breast.

G: He wants to know details. He wants to know dates and places.

HB: What details?

G: Times. All this sort of thing.

RB: Do you know what he would do?

G: What?

RB: What's the matter with you?

HB: What is he, what is he trying the case for you? What is he doing, trying the case?

RB: Oh, my God. Did you tell him that HARRY and I gave you money?

G: I told him everything. Because,

RB: What everything?

G: This is, ah, this is what he is here for, you know.

RB: Oh, God Almighty. Your, uh, uh

G: Because, uh

HB: Because what? Because what?

RB: Because what? Oh, God.

G: He represents me.

HB: He represents you and you going to court and say that you took money, my client took money.

RB: Do you know?

G: He wouldn't do that.

RB: Do you know?

HB: Then what then does he,

RB: Wait a minute

HB: Then what do you need him for EDDIE?

RB: Do you know, you know that RIFKIND'S got a team that's working on everything for us to do the research.

HB: And he asked us to did we ever give.

RB: They told us. Will you let me talk or do you want to talk?

HB: Go ahead, talk.

RB: They called us in one day, we went in to the city and they sat down with us and they said, you know, uh, this, this ACCETTA, the Assistant U.S. Attorney said if he don't get you on KAPRAKI, he's going to get you on charges that you paid off people in the FHA.

So they, they said, now you tell us, did you pay anybody off in the FHA? We're your attorney, so you better take come clean and tell us. I said, there's nothing to come clean about because I never gave anybody in the FHA five cents.

G: This is the people that your, uh, are working for your lawyer.

RB: Yeah, yeah, yeah.

HB: They're our attorneys.

RB: Yeah. Who the hell, you don't tell anybody ED. No one. I'm surprised at you.

HB: You better go to your attorney.

G: Yeah.

HB: And you tell him you got confused.

RB: Don't you tell him that you saw us.

HB: And you, you, you

G: Well I'll tell you, uh,

RB: Did you tell him that you saw us?

G: When?

RB: That you had a meeting with us?

G: No, no. Uh,

RB: Oh

G: What I want to ask you is this. How far is this thing going in my place?

RB: Who knows how far it's going in your place. I understand, somebody says that, uh, uh, who knows? Maybe they spoke to HC too. HC, though, is smart.

G: Yeah.

RB: He doesn't fall apart. He doesn't cop out like you.

G: You think, you think, CARROLL knows what's going on?

RB: DON CARROLL told me that they're, they're investigating in the, in the shop

HB: They, they

RB: He says but what the hell. What do they want to get? They guys didn't do anything.

G: You think that, well, like you say can confide in HC

HB: Yeah, well

G: Uh, how well do we know CARROLL? I don't know the man. I, I don't, don't know him.

HB: First of all, there's nothing going on there's, there's no one up there now.

G: Huh?

HB: It was only when CONDON was there. That they were there.

RB: Sure, CONDON left, the bastard, the son of bitch, he ought to croak. But all right, he left, but there is no one. But I don't understand you ED.

HB: What is there ED, let me tell you something. (INaudible)

RB: Don't you, you're not the only one they went to.

HB: What are you nervous about? What are you nervous about?

RB: What. Is there something else?

HB: We were nervous at one time comes. Now, I never gave you any money. That's for sure. ROSE never gave you any money. That's for sure

G: All right, that's the story, then. I got the set up.

HB: Now if you got money,

G: Yeah

HB: Then you should have reported it in income tax. Did you? Huh?

G: I see the point. Yeah.

HB: You never got money. You, you come clean with your attorney and tell him you never received any money from anyone.

G: Well, he says he wants to know details and everything, uh,

HB: They're no details;

G: I don't know whether or not he has been talking to anybody yet at all.

RB: Why, he's going to talk to someone?

HB: And he's going to tell them that you got money?

RB: Oh, my God Almighty.

G: Well no, I don't know if he's going to tell them, but he's going to talk to me.

RB: Oh, God Almighty.

G: But, uh, he, he says that sometimes,

HB: Did he hire any...

G: Huh?

HB: What? Sometimes what?

G: He says that he has to have the thing investigated. To find out what's going on with the thing. He says sometimes you're better off in these things to cooperate with them, uh, I don't know what the hell to make of them.

HB: What do you mean cooperate?

G: Huh?

HB: What do you mean by cooperate?

G: I don't know. This is why I'm talking to you people.

RB: I'm surprised at you. I really am. I'm so surprised at you. That you would ever go to anybody. And that we, what the hell is this?

HB: Yeah.

Unidentified Male Voice: Show me where Saint Paul's Road is?

HB: I think it's around the corner the other way, though. You better ask someone else.

G: Smart cab driver, doesn't know where he's going.

RB: Uh. I'm surprised at you that you would ever go to anybody or a lawyer and go and confide yourself.

G: ROSE, who the hell do you go to? Who do you go to?

RB: You, what kind of a lawyer is that, that he told you that you would be smart to cooperate when you did get money with the government. T you took money. Then and that you didn't repo it and that you had the money. They, he he's gonna tell you that, that

HB: What, what he going to tell you that

RB: Going to tell you cloak of immunity about you. No you're not. After that, then they'll get rid of you and they'll put you away.

HB: You never took, so how can they find it.

RB: You never took any.

HB: It's going to take five or six years and all that they'll throw the thing out and you going to call and, an

RB: Oh my God Almighty. I don't understand you.

G: So what happens while these things take five or six years?

HB: Nothing. You keep on working, that's all.

RB: So what? So you keep on working. You forget about it.

G: You think so?

HB: In other words, what your attorney is trying to tell you, you turn state evidence. That's what you trying to say.

G: I don't know. I don't know, HARRY.

HB: And do you know where you end up? In other words he says cop a plea. Take five years instead of ten years. That's what he's trying to tell you the dumb

G: How far does, does, does it make any difference how far your feet are off the ground when your hanging? It's rediculous.

RB: Oh, my (inaudible)

HB: Well you're going to I haven't got a headache because, because I never gave to you.

RB: Oh, you know why, I tell you. I know, but you know why I got a headache to think that ED would be that dumb.

G: Well, its.

RB: To speak to a lawyer and, and tell him a thing like that. To come clean.

G: Well, whatever you say to him it's, it's between you and the lawyer, anyhow.

RB: No, no. Do you know what you tell him?

G: Isn't that right?

RB: You know what you tell him?

HB: You tell him not to hire any attorney tonight.

RB: I would go back to him and I would tell him, not tonight.

G: I can't see him until Friday.

RB: Nah, when you see him.

HB: Why?

G: Huh?

HB: Why?

RB: Tell him.

HB: Wait a minute. Why?

G: Because he's going to be out in court out in Riverhead.

HB: Well, where, where does he live?

G: In Babylon.

HB: Call him up at his house. You want to see him.

RB: Do you know what I would tell him?

G: I hate to bother him.

HB: What?

RB: Do you know what I would tell him?

G: Oh, yeah.

RB: You know what I would tell him?

HB: Tell him you want to speak to him for a few minutes.

RB: You know what I would tell him when I see him.

G: What?

RB: You know I want to tell you something. Don't say you saw us. Now you listen to me.

HB: Say you understand everything just (inaudible)

RB: Now wait a minute.

G: Yeah

RB: Now you listen to me. What I tell you to say and you say what I tell you.

G: All right

RB: You know I'm going to tell you something. My conscious is bothering me. I never got anything from those people. But I

HB: I never got anything from anyone.

RB: I never, I, I tell you the truth. I have such a hatred and dislike for them

G: Oi Vay.

RB: What?

G: Oi Vay.

RB: What? Listen to me. I have such a hatred and dislike for them.

HB: I don't care for them.

RB: I don't care for them but I'd like to destroy them.

HB: (Inaudible)

RB: But them I realize, no, listen to me HARRY. But I realize I shouldn't, uh, I, I, I won't h[illegible]ny luck if I do a thing like that. [illegible] never gave me money.

HB: They never got it from anyone, anything.

RB: I never got anything from them. I never got.

HB: From anyone. ED.

G: So he

RB: If he took from anybody else (inaudible)

HB: What?

G: So he says why did you tell me this the first time.

HB: Because he

G: What do you tell him.

HB: I want to

RB: Because I wanted to put the whole blame on them. That's why. I wanted to put the blame on them. I'm telling you.

HB: (Inaudible) you know, you know, can't concentrate and your say I don't know, I'm just talking that way but look, first of all, he's not going to be your attorney.

G: No

HB: Right? And

G: Well I don't know from what you tell me, he seems to be a simple creature. You know what I mean?

HB: He can't be your attorney. He's not a criminal man is he?

G: He sure don't sound like from what you tell me.

HB: All right, you tell him, before he speaks to any criminal lawyer or anything, uh,

G: What you got another idiot looking for directions? No. Another lost cab driver. What should I tell him now?

HB: Tell him that, look,

G: You got to bear in mind now that he's a friend.

HB: All right, then look I want to level with you.

RB: (Inaudible)

HB: I didn't give anything your friend of mind. Forget this whole conversation. There's nothing to this whole thing. See?

G: Yeah.

HB: Then if you got a subpoena. Say you got a subpoena to, just to come down on a KAPRAKI. It was on a KAPRAKI matter.

G: Yeah

RB: That's all.

HB: That's all. And they want to see on the values of a KAPRAKI matter. That's all it amounts to. That's all. And when you get the subpoena then you'll speak to him again, the attorney. At that time, tell him nothing and bother with an attorney.

RB: Don't speak to him. Don't speak to him.

HB: No, you, go, say you'll speak to him at that time about an attorney,

G: Yeah.

HB: At that time, I'll steer you clear to a good criminal lawyer which we will pick up.

RB: Yeah, yeah, yeah.

G: You got someone who knows what they're doing?

HB: Certainly I got someone that knows, what the hell I'm going to give you a Suffolk man. So tell him the whole thing has been dropped.

RB: That's right.

G: Okay.

RB: That's right.

HB: Ed, ED

G: Yeah.

HB: See him tonight.

G: What today.

RB: Yeah.

G: Today is what, Tuesday.

HB: I'd see him tonight before he goes looking for any attorney. Say I got a good case, I want to forward (inaudible)

RB: Ok, Now, listen, yeah. Tell him to forget about the whole thing.

HB: Say, uh, nothing has happened.

RB: Nothing to it.

HB: All right?

RB: Nothing to it. Nothing to it.

G: I wish I could be as calm about it as you people.

RB: Well, uh, listen because they're fishing and they're trying

HB: Listen, the indictments may come down but you wouldn't be involved in the goddam thing anyway.

RB: ED

G: Huh?

RB: ED, you wouldn't be involved if you keep your mouth shut and your head cool. Nothing is going to happen to you. But you're going to be like this, you're going, your, there, there, uh, something will happen.

G: Ah shit.

RB: I don't know. Why do you even say these things.

HB: Forget it, he didn't tell him.

G: Are they bothering other people in my place, too?

HB: They're, well, whoever they bother they bother.

RB: So what do you care, they don't care. How many times you think they go in to HC

HB: Call me up tonight.

RB: And ask him. But he's as cool, cool as cucumber.

HB: On your way home, stop off and see him. Is that on your way home?

G: He wouldn't be in yet.

HB: Why?

A 322

G: Huh?

HB: Why?

G: Well let's see, Riverhead at six o'clock. Yeah. He might be home by then.

RB: You know why? He's liable to start to make investigations.

HB: I don't know why.

G: Take almost an hour. Huh?

RB: He's liable to start to make an investigation tomorrow.

HB: Tell him not to bother. Nothing is (inaudible)

G: So what harm if he starts an investigation?

HB: You don't want.

RB: We don't want anything, ED!

HB: I want to ask you a question. What do you mean what harm?

RB: I don't understand you.

HB: ED, if you're so methodical, what do you mean by what harm?

RB: Oh, God.

G: Yeah.

HB: What do you mean by what harm? To start what should he do? Uh, what should he do in an investigation?

RB: What kind of investigation do you want him to do? What, what do you want him to do?

G: I don't know what he is talking about.

RB: Well, you, you don't know what he is talking about:

HB: Is that what he wants? What does he want to do? Go down to the Federal DA and ask them what's on there for my client when he wouldn't even thinking client wouldn't even, when, when, may, may not even think of calling you or anything. And now all of a sudden they got your name. Huh?

RB: Now you tell me exactly what did the FBI say to you? Exactly. When they came in.

G: They came to the house.

RB: Yeah.

G: All right. Now they come to the house, and for about a half hour they just, you know, talk in circles. And then, they said that, uh, let me think now. Well first they come out with a paper, and they advise you of your rights, and they want you to sign the paper. You know, I don't sign anything unless my attorney is present and I said, all right. They read it to you anyhow, you know they read it to you. And after they read it to me, uh, they state that I'm the subject of an investigation, and a possible defendant. Let's see. In the complaint I don't know whether they said with or to the United States Government. And, uh, oh, you know at this point, I become very wary, and they said that it involves my work with the FHA, and they mentioned KAPRAKI. So I said thank you very much. I've got nothing further to say, and uh, that if I had anything to say I'd speak to my attorney first. And they left their two phone numbers. They said that I should think about it. If I should make a clean breast of everything, and, uh, think about it, and left me two phone numbers to call.

RB: Then they never mentjoned me or HARRY?

G: Huh?

RB: They never mentioned HARRY or me?

G: Oh, they mentioned Eastern, they mentioned a couple of different uh, mortgage corporations.

HB: Who did they mention?

RB: Well, whoever, what did they mention?

G: Well, they mentioned, uh, Eastern Service. Uh. Let me think now, yeah, United, Inter-Island.

RB: Springfield?

G: I don't remember. To be honest with you, I don't remember.

RB: Did they mention my name or HARRY'S name?

G: They said the BERNSTEINS. They said they're aware of relationships, uh, between the FHA and the BERNSTEINS and Eastern Service Corporation.

RB: See, they're fishing.

G: And, uh, they had another word besides relationships I can't remember.

RB: So what did you say?

G: I didn't. I listened.

RB: You listened and didn't say a word.

G: I listened.

RB: Did, did, they ask if you ever took any money?

G: No, no.

RB: They didn't ask you then?

G: At this point, no. They didn't say anything like that.

RB: So they didn't say anything. It was a fishing expedition, and I'm surprised at you that you mentioned anything to your lawyer.

HB: Well you better tell your lawyer.

RB: You better bad, back track that so Goddam fast. Nothing is going to happen to you ED.

HB: (Inaudible) nothing is happening and just forget it. Nobody is going to get it.

RB: If you keep your mouth shut nothing will happen.

HB: Did you tell your lawyer that you're going to get a criminal lawyer and we were going to pick up the tab.

G: No

HB: Good.

G: No.

HB: All right forget that.

G: As far as he is concerned, he is the only one I have spoken to and he is the only one I have spoken to.

HB: All right. All right, then you tell him that you didn't receive any money at all. I don't know I was just confused.

RB: Oh, can you imagine.

HB: And don't let him say, ah, come on I'm your attorney, tell me.

RB: Oh, no.

HB: Forget it. First of all, we never gave it to you anyway

G: All right, so much for him. But suppose something does come up and we get this, uh, sub

HB: Subpoena?

G: Sub, subpoena, yeah.

HB: Subpoena?

G: Subpoena, yeah

RB: If you get a subpoena

G: And all right, we get a good attorney on the thing and knows what he's doing. How about him?

RB: You don't tell anybody. I don't care who your attorney is.

HB: About what? Money? You never got money. You never

RB: You never got any money.

HB: ED, did you ever get money?

G: In other words, you just, all right, I get, all right.

HB: You never got money.

G: I get the picture, I get the story.

RB: Oh, my

HB: You never got money.

G: Okay.

RB: You never got anything.

G: All right.

HB: We never gave you anything.

G: Okay.

HB: You can say we gave you, but we never gave it to you. You look stupid that we gave it to you.

RB: Right. He'll sink. I'll tell you, he'll he'll, he'll, he'll, he'll

G: Who, the lawyer? Me?

RB: You, you, you go, you go for five years at least.

HB: You go, first of all, no one is going anywhere. I want you to know that.

RB: That's right.

HB: But when you say you got money you're admitting to a guilt

RB: You, your, you're admitting to a guilt.

G: Hmm.

HB: They'll say we'll give you this off, that off.

RB: We never, uh

HB: We gave you, we never gave you money.

RB You know what they do. They imprison you, when you take money

HB: They ask, wait a minute, now wait a minute. Money?

RB: And they don't pay income tax.

HB: What the hell do you, you're a fluke. Forget this, then they'll ask where is the income tax from this.

RB: That's right. That's what they'll say.

HB: The Government. They give you immunity on this but immediately the income tax people.

G: Un-huh.

HB: Why, why didn't you report it?

RB: That's right.

G: Un-huh.

RB: (Inaudible)

HB: They give you immunity on this. But immediately you they got you with the income tax.

RB: You never got five cents. You never got anything from anybody.

G: All right, I get the story.

RB: Did you hear me?

G: Yeah, okay

HB: Uh, Uh, if they did hear

G: Anybody.

RB: Did you hear me?

HB: Anybody.

RB: That goes for anybody. Nobody gave you anything.

HB: Now you go back to your lawyer and you said and you tell him, look, there is no more, there, I understand the whole damm thing was a general, uh, uh, and it's been dropped. And don't go looking and mention. Don't look. What the hell you say he's going to make an investigation.

G: I'll tell him forget it. Tell him forget about it.

RB: Is he a very very good friend of yours?

G: Yeah.

RB: A very, very good friend?

HB: How long do you know him?

G: Oh, fifteen years.

HB: All right then, now you, is he going to make, is he, you say he's going to make an investigation meaning he would go and make inquiries. When have they got, uh, uh, uh, on ED GOODWIN. Right?

G: Yeah.

HB: All of a sudden your name pops up where they never even bothered you.

RB: Ah. I don't believe it.

HB: What the hell is he going to make an investigation about?

RB: A PAT BUCKLEY is smarter. I'll take any two of (inaudible) I'm amazed at you.

HB: I'm, I'm, you know, if PAT BUCKLEY did something like that

RB: If PAT BUCKLEY, PAT BUCKLEY is smarter.

HB: This I could, I would never believe that of you.

RB: A FLORENCE BEHAR is smarter. She never got five cents from anybody, she said.

HB: I would never believe that of you. She never got a nickle from anybody.

RB: She never got a nickle from anybody.

G: Well, she's in your office, that's a different story.

HB: Wait a minute, we're talking KAPRAKI.

G: Huh?

RB: KAPRAKI.

HB: KAPRAKI.

RB: What do you mean, she's in an office, it's a different story?

HB: KAPRAKI, you're talking about.

RB: You are, wait a minute.

HB: KAPRAKI would said, she gave to you, to FLORENCE BEHAR.

RB: Yeah.

HB: To PAT BUCKLEY. They never got.

RB: They never got anything.

G: What difference does that make?

HB: If everyone said no, then KAPRAKI is lying.

G: Yeah.

HB: First

RB: FLORENCE BEHAR said no.

HB: PAT BUCKLEY never got a dime. She said that. Even the attorney she's got they asked her did you ever get money. Tell us. Of course not. And the answer is of course not. And I tell you, go back, call, go to your attorney now and call us up later.

RB: If you going to call us you change your

HB: Call us from the outside, call from your house and don't talk to much and just say that

RB: (Inaudible)

G: No, no, I'll call from home, no.

HB: That your, your, your, your your

G: I took care of it.

HB: Your, your you don't even have to say, uh, one, uh, I still may have a little leak but I found, you found out that there, there is no leak. That's all.

G: All right.

HB: The whole thing, I, uh, I told them if you put a little cement there, uh, would relieve the pressure.

RB: No, just say, just say if you dig another trench it's going to relieve the pressure. Then we'll know that you did all right.

G: Okay, that I saw the attorney and it's worked out.

RB: Yeah, yeah.

G: Okay.

RB: Yeah.

HB: But make it your business then. PAT BUCK

G: How late, when will, when will you be home?

RB: Oh, we'll be home

HB: Oh, we'll be home by nine o'clock.

RB: We'll be home nine o'clock. Call me any time.

HB: I want to ask you a question.

RB: You better, you

G: I want to get outside here.

HB: Where does your attorney, uh, live from your house?

RB: Don't call, don't call from your house.

HB: Where does your attorney live from your house?

G: Uh, half a mile, mile.

HB: So then go find you a place and then if he's not home go back and call him up

G: Yeah.

HB: And tell him you want to see him.

G: Yeah, well I'll leave word with his wife.

RB: Oh.

HB: And you, just there's nothing, "oh" you see, don't let your attorney say that you're going to cooperate or anything that's for the birds.

RB: Oh. Oh.

HB: Because, it's my word

G: He wouldn't, he wouldn't do anything like that.

HB: It's my word against

RB: Oh

HB: First of all we never gave you anything.

RB: I'm surprised at you.

HB: Secondly, secondly, ED, say, uh, the attorney said, as, you're getting immunity, this and that and the other thing. You know what happens?

G: Hmm.

HB: Get this. Got immunity on this, that and the other, which we never gave you anything, all of a sudden you declare something that you never got and where, why didn't you pay the income tax on it? Why didn't you pay the income tax on it?

G: I see, you people

HB: Huh?

G: You people know the angles, I don't.

HB: Why didn't you pay the income tax?

RB: But, but, but I told you not to say anything to anybody.

HB: Didn't we tell you not to say

G: Yeah, but a, but a lawyer, that's

RB: No, that's no lawyer.

HB: That's not lawyer, what do we got, spell it out?

G: All right, all right.

HB: Go back and tell the attorney and tell him the whole thing is dropped.

G: Right.

HB: And, uh, there was just a general investigation and

G: Yeah, right.

HB: They're all satisfied.

G: Okay.

HB: That's all, don't, uh, forget it.

RB: ED, the whole thing (inaudible)

HB: If anything materializes I'll let you know.

G: I'll let you know.

RB: Yeah (inaudible)

HB: If I get a subpoena, if I got any more questions, I'll call you.

G: Uh-huh.

RB: (Inaudible)

HB: Don't let them say I want to prepare it before you get the subpoena because you may not get a subpoena or anything. And if they ever want you to come down to, here's another thing, if they ever want you to come down, to talk

RB: If he should ask you, if you do it with the

HB: Wait a minute.

RB: BERNSTEINS with the money, say listen, I shouldn't, I, I, I, I don't like those people and I've been trying to

HB: Oh, forget that

RB: If he should say, HARRY, that's the best thing to say.

HB: Now say that look, I, I, I just saw them, uh, and, uh, that's all, maybe I shouldn't be that way that's all.

RB: (Inaudible) that's all.

HB: I realize I shouldn't talk and lie about anyone.

RB: I shouldn't lie about them

HB: That's all, you lied before. Forget it.

RB: You lied, I was lying. I really was lying.

HB: And uh, I was lying before. That's all.

RB: That's all, I was lying. Tell him you were lying.

HB: And tell him not to make any investigations

RB: You tell him you were a liar.

HB: And if, incidentally if ACCETTA or anyone calls you up to come down, inform me and call me.

G: Why would he call me?

HB: All right, I'll come down with my attorney. What?

G: Why would he call me? Oh, yeah.

HB: I'm just, I'm just, now I gotta brief you on every, I, uh, Wednesday comes Thursday and Friday.

G: Yeah, yeah, all right.

RB: If anybody calls you at all, get in touch with us right away.

HB: So, I'll come down and say I'll get my attorney and then come. Then they won't call you. All right, when can I come down with my attorney. You want me down, all right as soon as I get my attorney I'll be glad to come down, because you don't have to go down at their beck and call because they didn't subpoena you

RB: Just call us.

HB: Then if they subpoena you, then you just go down and take the fifth amendment. Then we'll get you an attorney. Forget your friend. I can see right away

RB: (Inaudible) I think you ought to give him that other number you got for the house.

HB: Huh?

RB: You ought to give him the other number, no?

No

HB: 636-5254

RB: 5254, you got that number?

HB: He's got that.

G: It's in the phone book anyhow right?

HB: Yeah.

RB: It's not 52 is that? Yeah, 5254 (inaudible) All right.

G: Okay.

RB: But, uh, this is what you should do.

G: All right, I'll take [illegible]e of it tonight.

RB: Don't you dare, you better back track,
you better do that, oh

HB: And furthermore,

G: I'm glad I talked to you.

HB: If you get a subpoena

G: Yeah

HB: Dont' say anything to anyone. We'll get
you an attorney. We'll get you an attorney.

RB: You take these little, you take these little,
uh, you take these little lawyers sometimes
they look for something so that they should
make some extra money for themselves, too.

G: Garden City Police.

RB: What's the matter with you? ED, I don't
understand you I really don't.

G: Hey you better move. This cop is

RB: I begged you.

G: This guy is looking at you funny.

RB: I begged you. I begged you and begged you.
Now.

HB: He lives there. See?

G: Oh, oh.

RB: No, he's backing up.

G: Now, take it easy don't go fast. He's liable to think that you've robbed a house or something.

RB: Where is, where is your, your car?

HB: Right back.

G: Around the corner. Where, where am I at?

HB: Right here. We just passed it.

G: I'm, oh, I'm sorry I thought, we were, I thought we were on another block.

RB: (Inaudible) I want to tell you've better, You've better

G: All right. I'll see him tonight.

RB: You better change your, change your and no one but no one

G: Un-huh

RB: And no matter how the FBI they come back or anything and try to harass you, the answer is no.

HB: And they say we got the answers.

RB: The answer is no.

HB: You got so they'll say we got affidavits. You got money.

RB: They've got no affidavits.

HB: Then you don't need me. Then if you got an affidavit.

RB: If you got affidavits, you don't need me.

HB: If the other people lied.

RB: Yeah.

HB: It's not my fault. You better speak to my attorney.

RB: No.

G: You don't need to go back that way HARRY. You can drop me off.

HB: Yeah, all right, you can walk alone here.

RB: (Inaudible) ED.

G: Better to let me walk. Better back in though. Don't leave your ass out.

RB: ED, do you hear me? ED, what I tell you. Do you hear me what I tell you? What?

HB: He knows, he knows.

RB: No one but no one.

HB: ED, not even your attorney should know these things.

RB: Nobody should know that, but nobody.

HB: It's privileged. When he says you better cooperate with them and they cooperate, RB: Oh,

HB: There is no such thing, as, you are cooperating. You never got a dime. You are cooperating. What's your problem. You're cooperating.

RB: You never got anything from anybody, do you hear me?

G: Yeah.

RB: That is your answer, over and over and over again.

HB: If someone produced a check,

G: Huh?

HB: If someone produced a check, let them.

RB: Let, nobody can produce a check.

G: Of course not.

RB: Nobody.

HB: All right, so

RB: So there.

HB: Your, your attorney says to cooperate. So then, they'll get you on, on taxes. And then you'll, you'll pay for taxes that you never even received money on,

RB: And he'll tell you that he's going to get you off and all that. Don't listen to me, Listen to me. There are plenty of lawyers. I know a lawyer that did something to a guy. He promised him this, that and the other thing. The guy has got Parkinson's and, and, and he went. Don't you even with a lawyer you can't.

HB: Call your friend up and say look

RB: You got lawyers that can suck the blood out of you.

HB: You're not going to a doctor that's been sick.

G: Better than call him. Better than call him, I'll go see him.

HB: See him, see him.

G: (Inaudible) see him. Yeah.

RB: You've got to go and see him.

HB: See him tonight and tell him the whole thing is off. Don't let him make any

RB: Naw.

HB: What did he say he was going to make some investigation?

G: He said he was have to, uh, do some investigating and find out what was going on.

HB: Don't let him find out a goddamn thing.

RB: Oh, he's gonna stir up a hornet's nest.

HB: You know what he is going to do? Now it has been dragging for six months, three months, they keep asking questions.

RB: They keep, they keep going, they

HB: All of a sudden he's gonna.

RB: They, he's gonna fix it up. He's gonna, he's gonna put everybody behind the eight ball. What's the matter with you?

G: Look, this is why I ask you why I come here.

RB: Oh, oh, but I, but I told you the last time, ED. Keep your mouth shut. You got nothing.

HB: You say he's your attorney. He's your attorney. But he nev, you still haven't gotten anything.

RB: We don't confide in anybody. You never (Inaudible)

G: Uh-huh.

HB: He's your attorney. All of a sudden if you got say some, say someone gave you a thousand dollars. He'll want $500 of it all of a sudden.

G: Oh, maybe this is why he's asking.

HB: Well, what do you think?

G: Yeah.

HB: He wants a piece of the loot which you didn't get, for christsakes.

RB: Oh

HB: Let's go home.

RB: Tell him now you saw, you saw an attorney and he said (inaudible)

HB: Look, I didn't take anything which you didn't take, ED.

RB: I'll tell you this, I shouldn't, I had no right to do this. I don't know, I know it's a lie.

HB: First of all

RB: I didn't take anything.

HB: I didn't take anything.

G: Yeah.

RB: And, and (inaudible)

HB: And you understand the whole thing is dropped anyway.

RB: Yeah.

HB: Then if anything materialzes.

RB: No I never took anything (inaudible)

HB: Don't let him start raising a hornet's nest that he can get a fee.

RB: Just forget about it.

HB: You see he may be waiting for a fee now. But don't say anything, to him about it.

G: I mean, he hasn't even talked about that.

RB: Naw.

HB: Don't tell him about it.

RB: How long did you sit with him.

G: Oh, what, five minutes, ten minutes, tops.

HB: All right, go and tell him about it.

RB: I hope he didn't have a recording machine there.

HB: No.

G: No, he's not like that. He's not, he's not like that.

HB: (Inaudible)

RB: No, but some attorneys can get like that

HB: It's all privy.

RB: Yeah, well. All right.

HB: But don't let him get to the criminal lawyers.

RB: Yeah.

G: No?

RB: No, don't do that

HB: When it comes to a criminal lawyer, we'll get you, you a good one (inaudible)

RB: And don't let him talk you into anything.

HB: Because you know how we can justify that? You know how?

G: How?

HB: When it comes to a criminal attorney.

RB: All right, I want to tell you something.

HB: Wait a minute. You have a problem. You know someone, and, uh, and you knew that we were having attorneys, we have problems. You, you could have said who, and, uh, we can, I don't know

RB: What are you talking about?

HB: Now, with, with a criminal attorney you can (inaudible)

RB: Uh, you cross that bridge with (inaudible)

HB: First of all, I don't think it will come to that.

RB: Yeah, yeah, yeah. When that comes, then we'll tell you what. Then you get in touch with us. You call me tonight.

G: Yeah.

RB: And let me know.

G: Yeah.

HB: Stop getting. Now, you look, ED. It's not pleasant. We were restless the first time we were even spoken to. Believe me we're not made of iron, but at least, we, we, we got a clear head

RB: Oh, Jesus Christ

HB: Because fortunately for us we don't give anything to anyone.

RB: E. G. La. I treat you like a woman. I want, I want you to know yeah

HB: To anyone, I didn't know anything about KAPRAKI or CARDON, what, CARDON.

RB: Yeah

HB: All all we did is go before the Grand Jury and read the fifth, I refused to answer, I refused to answer, I refuse to answer. That's it. Good-by.

RB: How many times did I have FBI come up to my office, uh, to ask about different things. Uh, we understand you paid off this one and that, it's a lie. It's a lie. You say it's a lie. You hear about these things, you read about them, in the papers all the time. But if you don't admit to anything nobody can ever say anything.

G: Uh-huh.

RB: What's the matter with you.

HB: Call up later.

G: Okay.

HB: All right. Go ahead.

G: How do you open this damn thing here?

RB: Don't ever (inaudible)

HB: Watch out ROSE. Let him out.

RB: I don't, I don't know.

G: I don't, I don't know. This ain't, this ain't the button. Is it

RB: Look at, hey ED, ED, before you go. Look what went on in the FHA a few years ago with the FBI.

G: I know.

RB: The only thing different was questions.

HB: You don't know what (inaudible)

RB: And everybody, ED, said no. And they denied it. And they, they accused every, practically everybody, in there that they were taking. You know that.

G: Yeah.

RB: And what did they all say. You, they all denied it.

HB: What happened.

RB: If you denied it, what happened to it? What happened to it?

G: Yeah.

HB: The only proof they can have is from a KAPRAKI that she said she paid this one, and gave, she'll menticned fifty people and everyone is a goddamn liar. Everyone that will say I didn't receive it so what is KAPRAKI. The State Department says she's a thief.

RB: KAPRAKI says I worked on her deals, then, I never, never had anything to do with her.

HB: The State Department says she's a thief.

G: Hm.

RB: Come here. Wait a minute. Listen. This is going to be proved.

HB: She was convicted for something in Queens.

RB: Yeah. This

HB: Uh, prior to ever coming into our office.

RB: ED, this is going.

G: Really.

HB: Yeah.

RB: This, if this ever comes to a trial,

HB: And, I

RB: She said that I worked on her cases and I phonied them. I never had. She was never in my office. I never had anything to do with her deals.

HB: We never spoke to her, but once, hello. See?

RB: How do you like that? What do you think I'm going to get, uh, panic over it?

HB: Call your attorney and tell him to forget the whole thing.

G: I'll go see him.

HB: See him, I mean see him. Don't talk to him on the phone.

RB: You'll, you'll, you'll call us later.

HB: Call me later

G: Yeah, Yeah. Wait a second. You've got to let seat belt. Okay. Now I can go.

HB: And then (inaudible)

RB: And, and, and, and you know what you'll say. Uh, yeah. If you dig another trench it, it won't leak anymore.

RB: No

HB: No, the, the water conditions, uh, will take the pressure off and, and

RB: No, no, if you dig another trench it'll, it'll, it'll, it'll

G: Keep it, keep it simple. I'm confused enough.

RB: It'll remove the hydrostatic condition.

G: Okay.

RB: That's all.

HB: That's all. It will remove the hydrastatic condition.

RB: Hydrastatic condition.

G: It's cramped in here, my God.

HB: That's all. If anyone is listening to along the lines that we're talking at

G: Yeah

RB: It's water problems. That's right.

G: Okay, you got a handle here to open the thing. All right, all right.

HB: All right just relax (inaudible) ED

G: This car ain't meant for big people, let me tell you.

HB: Did you speak to TERRY?

G:	Huh?
HB:	Huh?
G:	TERRY?
HB:	Yeah.
G:	No.
HB:	About, uh, the wires and all.
G:	About the what?
HB:	Wires.
RB:	Wires. She's out on strike.
G:	Oh, that nonsense. Oh. Nothing you can do with it.
RB:	Oh.
G:	She's out on strike.
HB:	All right
G:	Okay.
RB;	Okay.
G:	God bless.

GOVERNMENT'S EXHIBIT 4A

EDWARD J. GOODWIN, ALFRED FAYER, ROSE BERNSTEIN and HARRY BERNSTEIN on February 9, 1972, in Maison Pepi Restaurant, West Hempstead, New York:

(Tape Inaudible)

EDWARD J. GOODWIN: (Inaudible) class and (inaudible) when I get home. Okay? All right? Okay? God Bless. Miss you. Be good now. Bye bye.

HARRY BERNSTEIN: What are you drinking, Jack Daniels?

G: No, no, no, I'll get a headache (inaudible) I bumbed my knee getting into that goddamn car. Let me have, uh, Johnnie Walker Red.

(Tape Inaudible)

ALFRED FAYER: What are you drinking?

HB: Let me have, let me have Dewars on the rocks with a twist.

F: But, uh, (inaudible).

HB: Yeah (inaudible).

(Tape Inaudible)

F: (Inaudible)

G: Hmm.

F: Uh.

G: I'm going to be listening alot. I'll let you know that right now.

F: ROSE has mentioned to me this morning, uh, what you had said to her yesterday.

All I can say is this, I think you know my stature in the profession. Uh, uh I would be very, very careful uh, about volunteering any information or saying anything. I'll tell you why. Number one (inaudible). There's no question about it. (Inaudible) who has said what and who hasn't said what, and that they know everything that's going on and so forth, and the next thing you know, you commit yourself. And after you're committed, you're in. You can't back out. So far as (inaudible) on the mercy of anyone (inaudible). Let's not kid ourselves. All you have to do is look back on every, any investigation that's ever made. Go back to, uh, the building department investigation a couple of years ago.

G: You're talking about, building, FHA building or, or...

F: No, no, I'm talking about the New York City, remember.

G: Oh, that's good. I'm thirsty.

HB: How about some of that famous pumpernickel hot seasoned bread? Do you know which kind I'm talking about?

Waiter: (Inaudible)

G: (Inaudible)

HB: Toasted.

G: You don't have any?

Waiter: (Inaudible)

HB: (Inaudible). Yeah. Toasted.

ROSE BERNSTEIN: (Inaudible)

HB: (Inaudible)

G: I never realized it.

HB: Oh. (Inaudible)

HB: (Inaudible)

G: I'm sorry I didn't mean to interrupt you.

F: No, no, that's all right . But the wind up of, uh, there was that they dragged the building inspectors right in all the way, City of New York. Everyone of these things and they do it. Now. The only thing as I see it, and I tell you this, this is exactly the advise that I had given ROSE and HARRY. Say nothing. Why? When you say nothing, they have to prove the case against you. They have to make it. If you say something, which has helped them, which has helped them in a lot of different places and a lot of different areas,

G: Yeah, but, AL, isn't this sort of like a double standard between someone who doesn't work for the government and (inaudible) for the government.

F: Double standard is very simple double standard. The only difference is that if you refuse to talk.

G: Yeah.

F: You lose your job.

G: Oh yeah, that I know.

F: Period. That's the standard.

HB: He talks he'll lose his job anyway, if he talks.

F: You're gonna lose anyway.

HB: (Inaudible)

F: The, remember, that the refusal to talk is never, never means they've not permitted to mean guilt in so far as a court is concerned. The only thing it does mean is that the government has the right to let you go. If you talk you know you're gonna be let go anyway, and then you're opening other avenues for yourself. You're opening up, as I told them the same thing and I tell you now...

G: Hmm.

F: I'm giving you no different statement or advice now than I gave them before.

G: Hmm.

F: But, uh, the other avenues that are being opened up, no kidding about it, no question about it, Revenue Service, Uncle Sam steps in (inaudible). Why's it here, why's it there. They're in the same position. Everybody's in this position. So that, uh, all you do, and all they would be doing, and they would have done, had they, uh, said a word, is (inaudible) live with it. I, I was gonna say, there's your double standard. That's the difference, no question about it.

G: Uh, I'm con, I'm confused a little bit on some of this now, uh, I didn't get into this in detail but I understood that as far as, uh, where the government is concerned, Federal law is different from state in that state you have to have corroboration and everything else and Federal law all you need is merely an accusation.

F: In what?

G: As far as you know, as, like a testimony against you.

F: As to what?

G: Any wrongdoing.

F: Absolutely not so. Absolutely not so and whoever told you that is completely wrong. And I tell you now, whoever said this made a very wild, wild statement.

RB: Who told you this EDDY, your attorney?

F: Let me say this, uh...

G: Like I said we didn't get into it. He started to tell me something about this.

F Now, let me say this, and I'm now, I tell you this professionally. In the United States of America, and I don't, I'm not, (inaudible) state, I'm talking about every one of them. I'm talking about the Federal Government. The law is absolutely clear that you must have proof. (Inaudible).

RB: Oh, what have we got here?

Waiter: (Inaudible)

G: Hmm, that's a lot easier than this (Inaudible) Venison. Would you believe it I had venison Saturday night.

F: Gee, that, that's an unusual thing to have twice in one week.

G: Yeah.

RB: What have they got, what is that charcoal what? I can't see there.

F: Which, where, where, where?

RB: Right there.

F: Sauerbraten.

G: Sauerbraten.

RB: Oh. What is that, medallion what? Medallion du Bary, medallions of beef. That's, little, uh, pieces of steak, parts of steak. And then I'll take coq au vin.

G: I'd love to taste the sauerbraten but my stomach was doing nip ups. I'll stay with something simple.

RB: I thing the best thing is to take what they've got there, huh?

G: Oh sure, yeah, anything on the big menu. In my opinion big menus mean one thing, that they have it in the freezer.

RB: Yeah.

G: Least, that's the way I feel about it.

RB: Maybe he's got a steak, regular steak, would you (inaudible) is the regular steak, AL?

F: No, not me. I thing I'm gonna have the coq au vin.

RB: That's chicken in the barn. (Inaudible)

F: Yes. Red wine.

RB: Hmm, maybe that's good.

F: I want half that roast duck.

RB: Huh?

F: (Inaudible) the roast duck. Yeah, I think I'll have the coq au vin.

G: It looks like HARRY ran into a friend, huh?

RB: Where did HARRY go?

F: Where did he go?

G: I don't know, I hear his voice out there.

RB: ED, why don't you take some of this bread.

G: Yeah, That's

RB: Here try this bread. Try this bread.

HB: (Inaudible) Don't look at this.

RB: No. Huh?

F: Why not? I don't want any.

G: Well, you know.

HB: I know.

RB: Is the steak good?

HB: The steak is good here.

RB: Yeah.

HB: Excellent here. You remember?

RB: Yeah.

HB: (Inaudible), but their steak is excellent here. What the hell is medallion, what is that?

G: I don't know.

F: Medallion beef is little round, like tomatoes.

HB: Yeah.

F: Little hearts of beef.

HB: Did he bring the, uh...

RB: Yeah.

G: Hot bread? Here you go.

HB: I don't want any. This is for you.

RB: All right.

G: Fatsville.

HB: What?

G: That's fatsville.

RB: (Inaudible)

F: No, no, no. I think I'm gonna have the...

RB: How about lobster?

F: You know I think I may even have, I think I'll have the veal scalloppini. That should be good enough.

RB: (Inaudible)

G: Let me have a little butter HARRY, huh?

HB: Hmm, here's the bread. (Inaudible)

G: Yeah I see. Okay. Good.

HB: Not me, I don't eat that. I'll eat this.

G: He's just showing off.

HB: Did he take the hot?

G: Yeah.

F: (Inaudible)

G: So what's gonna be?

F: I tell you now on a professional basis that the law in the forty, fifty states, I almost said forty eight, you know, (inaudible) I go back a little ways. At the Federal level, you must have corroboration. There is no question about it. Now the question is where does the corroboration come from. This whole thing stems from this KAPRAKI, no question about it.

And they do have KAPRAKI and CARDONA. We know...

G: They got a what?

HB: Give me some (inaudible)

F: KAPRAKI and CARDONA. (Inaudible)

G: Who the hell is CARDONA?

F: CARDONA is, they are very dissatisfied with his testimony. There were several shall I say upsets, got it there were several disputes between the Assistant US Attorney and CARDONA. So that in my opinion, the only way anybody here is going to be hurt is if they hurt themselves. Told ROSE before she went up, because ROSE gets nervous, there's no question about it, because everyone does.

G: Everybody does.

F: Everybody does.

G: I'm nervous too.

F: So ROSE, which is understandable. In my, uh, I'm at home in the courtroom but you people are not.

G: Yeah.

F: I told ROSE before she goes in there she's gonna have to make up her mind, to sit tight, no matter what they say. Keep quiet.

Anything she says, I'll tell you now, can be used against her. Now you know that, that they call the, present day...

HB: (Inaudible)

F: They call the present day, they call it the Miranda warning. They always let you know that anything you say can be used against you. That's what they use it for. If anything, if anybody says there, it's gonna hurt them. This is basically my feeling. This is why when they, ROSE mentioned this this morning, I said, invite GOODWIN to sit down, because everybody's in the same boat.

G: That's right. That's it exactly.

RB: If you keep your mouth shut you can't get hurt.

G: Huh?

RB: Ed, if you keep your mouth shut you can't get hurt.

F: You see, the basic problem is...

HB: Want another drink?

F: Yeah. I'm gonna have another one.

HB: One, one more, come on, take one more.

G: No. No, no, no. That's it. Otherwise I get a headache. I gotta drive home you know..

HB: All right. Take a, take a...

RB: So what, you're gonna eat.

F: I drive to New Rochelle.

G: No, no, no, no.

HB: (Inaudible) on this one.

G: No, no, I'll stay, I'll stay with this. If I want more later I'll get more later.

RB: Uh, let's order.

HB: Give him one more, he'll pick it up. Let's order.

G: Otherwise I get a headache. Yeah.

RB: Let's order.

HB: And can we get some more of that, uh, rye crisp?

F: What are you having ROSE?

RB: I didn't order. Do you have anything else besides this?

Waiter: Like, uh, what would you like?

HB: Get a sirloin steak. It's good here.

F: Not me.

HB: Ed.

Waiter: See the menu there.

HB: I'm sorry.

Waiter: See the menu on the blackboard.

G: No, I

Waiter: (Inaudible)

G: You didn't look at the menu really.

RB: Yeah, I, no, I, I saw the menu. I'll take the sirloin steak, medium?

Waiter: Sure, sure, sirloin is on the menu.

RB: Do you have a small sirloin or...

Waiter: Yes minute steak.

RB: Yeah, that what I want.

HB: Is that a sirloin though?

Waiter: A sirloin.

F: Which is your chef better with? The, uh, uh, coq au vin rouge or the, uh (inaudible)

Waiter: Well, the coq au vin comes with potatoes, vegetables and (inaudible).

F: But which is he better with though?

Waiter: Uh. I don't know. the coq au vin rouge, uh, he does a good job on both of them, uh, probably the coq au vin rouge.

F: I'll take it.

HB: How's the lobster?

Waiter: Very good.

HB: All right, no regular lobster.

Waiter: Broiled lobster?

HB: Broiled lobster.

Waiter: We only have, I can give you a twin lobster.

HB: No, no, forget it (inaudible). I didn't want any...

Waiter: (Inaudible)

G: It's not fresh.

HB: No, uh, let me have a sirloin steak. Medium.

G: I'll go for a steak. Rare.

Waiter: Sirloin?

G: Yeah. Black and blue.

HB: I'll take mine medium rare. You want yours real rare?

G: Rare.

HB: All right then you get...

G: Barely warm.

HB: Family style vegetables.

RB: That's hot, that's hot, very hot.

Waiter: And uh, potatoes...baked, french fried or mashed? For the minute steak and the sirloins.

RB: I think I'll have baked potatoes.

HB: You got french fries or baked?

I'm going to have that zucchini.

Waiter: He's going to have the coq au vin.

F: No, I'm going to have the coq au vin.

HB: I'm going to have that zucchini.

Waiter: Then we have creamed spinach and carrots for our vegetable for (inaudible).

RB: What do you do? Have a salad too?

Waiter: I can give you salad also.

HB: No, I don't want it. I want, I'll take a, I'm gonna have, uh, zucchini, I mean creamed spinach, and, uh,

RB: I'll have the...

Waiter: I serve the vegetables family style.

HB: All right.

Waiter: Okay.

HB: Okay.

RB: I'll have the baked, uh...

G: It's too confusing for me.

HB: Want some french fries? It's good here.

G: Huh?

HB: French fries are terrific here.

G: No I wouldn't eat no french fries.

HB: (Inaudible)

G: Little, little, little baked potato or, uh...

RB: I'll, have the baked potato.

HB: Yeah, real small.

G: Small baked potato.

HB: Everything should be hot, right?

Waiter: You want a baked potato too? Right sir?

HB: No.

RB: I'll have, I'll have a baked potato. You want a baked potato?

F: Not me. No.

HB: I'm gonna eat, uh,

G: Get hungry talking about it.

HB: Munch on it. (Inaudible)

G: And believe me, that's the furthest thing from my mind tonight was food.

Waiter: I'll set it up family style. (Inaudible)

HB: And how about salad?

Waiter: Italian, French, Russian, Roquefort.

RB: Should we get something first? You want something?

F: No. I don't want...no, nothing.

RB: You want a shrimp cocktail first?

HB: Take a shrimp first.

RB: How about you Ed?

G: I wouldn't normally, so I won't now.

HB: They got nice soup here if you want.

G: No.

Waiter: We have yankee bean. We have some (inaudible)

HB: They happen to have, uh, onion soup, you know?

Waiter: Consomme of chicken.

RB: No.

Waiter: No? No salad? All set?

G: No.

HB: Yeah. They want a salad. No? You want a salad ROSE? I don't want any. Give, give me roquefort...

RB: What do you have, salad with roquefort dressing,

HB: Give her (inaudible).

RB: But no, I don't want any, no garlic, no onions.

HB: No tomatoes.

RB: No tomatoes.

HB: No (inaudible)

Waiter: No (inaudible)

HB: All right, and, uh, bring some of the...

RB: That you can give me first. That you can give me now.

HB: And then you can bring some of the other, then the, uh, give us, uh (inaudible).

Waiter: Right sir. Right.

HB: And put a head on this.

G: No, no, no, let me stay with it. I can always order more later. Yeah.

RB: Go ahead.

F: But, uh, you see, getting back to, uh, what you say, my feeling is, everybody sit tight, everybody has to sit tight. This is what I've advised them. This is what everybody has done.

G: But am I in the same position as you people?

HB: Yes.

G: You know what I mean?

F: Except for one thing.

HB: Yes.

G: Huh?

F: Yes. Except for one thing.

G: I work for the government.

F: No, no, no. The only difference is this. If you are subpoenaed before the grand jury...

G: Yeah.

F: If you at that point refuse to testify...

G: Yeah.

F: Then your job is on the rocks. That's, that's the difference.

G: Yeah.

HB: Positively.

F: Other than that, other than that, there's no difference. Now let's put it on the other end, side. Put the shoe in the other corner, foot. Let's assume that you go down and you are guilty, if you are, and, uh, you tell them certain things.

G: Uh huh.

F: You lose your job anyway. So, uh, you're in the, uh,...

HB: You're damned if you do and damned if you don't.

F: You're in the position where, uh, which ever way you turn.

G: You see this, I, this, this KEN mentioned to me, but I didn't understand when he...

Waiter: Excuse me. How did you want your minute steak,

RB: Uh, medium.

Waiter: Medium?

HB: Make sure it's hot, though, huh?

G: You see this I, I didn't understand from him, but now, now I understand what you're saying. He started to tell me about, like I said I didn't spend much time with him like a few minutes, you know.

F: You see, the difference basically, remember...

RB: Wrong. He's told you wrong.

G: Now I understand why.

F: Remember it this way.

RB: What?

G: Well he says one way or the other, he said, you know, if you get called, he says your job is out.

RB: He did tell you that.

G: That's it! Yeah. This he told me, but I didn't understand what he talked about.

F: That's right. Whichever way you turn.

RB: Yea, yea, yea, yeah.

F: So the point is this, now you have to...

G: The only other thing, of course, is if you go in there and you lie and then, then you're in real trouble.

F: Oh.

G: Then you're in bad trouble.

F: That's a different story.

RB: Wait a minute.

F: Now you're...

G: Then, then you're in perjury

RB: Wait a minute. Wait a minute, but nobody's telling you...

G: Huh?

RB: But nobody's telling you to say certain things that you told the attorney. And, and who's gonna prove it? That's not possible, cause who's gonna prove it? You tell me! Who's gonna prove it?

F: Well, first of all, listen to me, be sens.., you're not even at that stage.

RB: Don't forget (inaudible)

F: Not possible, you're in a different stage, you're in a stage now where you refuse to testify. All right? Let's assume it does come to that.

G: Yeah.

F: Then you're put to the wall.

G: Yeah.

F: So?

HB: That's enough, get me some of that fried...

Waiter: Coming up, sir.

HB: Okay. Thanks.

F: Then you open up the next Pandora's Box. I mean see these things are not, this is why these people have to be very careful about what they do. In this there has been an investigation going on. These things are never simple as they look.

Let's assume, that you make certain statements. The next thing that he comes, he comes along with is tax returns. You've opened that up. That's in a different field. Then they come along. This is why I say to everyone, this is not only you.

HB: ROSE can I have some of those sticks?

F: Everyone is in the identical position. They're damned if they do, and they're damned if they don't. You think they're not in that same position? And this is why I have said and my advice is this to them. Refuse to testify. And this is what they did. I don't know if you're aware of it.

G: This is what they told me.

HB: (Inaudible)

F: I told her, you refuse to testify.

G: Everybody just take the fifth.

F: That's right. Now, same thing..(inaudible) Frank Fey was called down, same thing. Schiller was down. Everybody was down. This is exactly the same thing...

G: They had him down already?

HB: Yep. All of 'em.

F: Oh sure. Each and everyone of them. Everyone did the same thing! Refuse! That was the end of it! Now, the, uh, attorney's in a position, the US Attorney is in the position, he's looking for corroboration. There's no question about it. But he can't find it. So that, uh, I say, my, uh, my best opinion of the whole situation is everybody sit tight, uh, well, I was shocked! Truly shocked. Anybody, I don't know how good this man is, I don't even know who he is and I'm not interested. I don't know what his standing is. Any man that's in the profession and makes a statement like that does not have experience. I tell you now.

G: Sometimes this is what happens when you, you know, you deal with a friend.

F: He is completely inexperienced in analysis. I grant you this, I understand that they've got...

HB: We got the biggest...

RB: Did you talk to him? You didn't talk to him, yet?

G: Huh?

RB: You didn't see him or talk to him yet?

G: No.

RB: He didn't start to do anything did he?

G: No, not to my knowledge, no.

F: I tell you now that we have...

HB: We got the biggest attorneys.

F: We, we have counsel involved in this picture. No secret. Simon Rifkind

RB: See?

HB: Ask your attorney who Simon Rifkind is?

F: Ask your attorney, (inaudible) former Federal judge absolutely agrees with me. No testimony whatsoever because he (inaudible).

HB: Someone, we went down with someone who wanted to testimony, he says...

F: We had attorneys.

HB: You know those attorneys (inaudible)

G: Yeah.

HB: Someone had a, wanted, didn't want to take the fifth. He wanted, he wanted to assist, he says I want, uh, an affidavit, with signature that he's doing it over my, over my...

F: This is now the judge speaking. He says before you go in I either withdraw from the case right now, or you will sign this statement stating that I have (inaudible) whatever you do is on your own.

RB: With the guy that insisted on talking. He insisted on talking.

F: He says, you do it on your own but not, not with my approval.

G: No kidding.

RB: So, he insisted.

HB: The only one I ever, whoever....

F: We have counsel, counsel for, we have counsel for, uh, (inaudible) not kidding ourselves, for Schiller, for Fey, for Florence Behar. All of them. Everyone of them.

G: But not the, not the same guy.

F: No. No. Different one.

G: Because, you know.

F: Oh, you can't...

G: Don't look right.

F: Some are the same, but some of them are different.

G: Huh?

F: Some are the same but some of them are varied. He can represent a couple of each.

G: That's none of my business.

F: Yeah, I know. I'm saying.

G: Yeah.

F: This is why, when I heard this, I was stunned. You're the first man that ever made a statement like that. I say they as I did before when we were talking you know my standing in the profession?

G: Yeah.

F: You know the stature I...

HB: (Inaudible) the most brilliant guy.

RB: Now wait a minute Harry, please (inaudible).

F: The, uh, I have never and I tell you this now, check on anyone that I have ever represented, I have never permitted in my life...

G: Never what?

F: Never permitted a client of mine to talk. Never! I've never even heard of it. That's why you, this thing shocked me. It's an amazing thing. You know and let me ask you this, does he have, is he experienced in these matters?

HB: Either yes or no, does he?

G: I don't really know. To be honest with you.

HB: He couldn't.

G: I don't really know.

RB: And he told him to go and come clean and tell everything about things.

See. It always...

G: Well he didn't say that but he said, you know, it is, it is a possibility.

F: Let me put it this way.

G: Yeah.

F: This is now and as you know I'm representing them its, but I'm leveling with you they tell me you've been a friend of long standing.

G: Yeah.

F: As a professional you always do and you look at it with this point of view. If I do a certair thing, what do I gain? What do I gain? Now

G: Yeah.

F: This is the thing. Now the answer is here is what do you gain? And that, that's the real, that the real $64,000 question. What do you gain? You can only lose. You can't gain.

G: You're right.

F: That is why I was, I was so stunned to hear it. Let me ask you this. I uh, I understand, by the way you can, you don't have to make any deduction, we're just talking openly now.

G: Al, as I said initially I was gonna do a lot of listening.

F: No, if I'm mis..., if I'm, if I'm, uh, I'm just curious about one thing.

G: Yeah?

F: When the, uh, FBI agents questioned you, what did you tell them?

G: I listened.

F: When you say you listened...

G: I didn't tell them,

F: You said nothing.

G: No, no. I listened.

F: Did you deny anything?

G: I just sat and I listened to the whole thing. They asked me to sign a paper.

F: Saying what?

G: Advising you of your rights. Like the thing you were talking about before.

F: Miranda.

G: I, I don't know what it is.

F: Yeah.

G: They advise you of your rights.

F: They advise you of your rights, your right to have counsel and so forth, yeah.

G: And I said I don't write my name without my lawyer being here. Any time, any paper any where.

RB: That's all right.

HB: Yeah. That's, that's fine.

RB: Sure.

G: My attorney should be present any time I do anything.

F: Meet your friend. (laugh)

G: So, so, he says okay.

RB: I don't breathe, uh, uh, without...

G: So he says okay. He says, well, he says, I want you to read it anyhow. So I read it and I said okay, so I read it. It was all right. And then they started to drag in all about you people before, you know, why drag into it again...

F: Hm. No I was just curious as to what they but, uh, I can't ...

RB: But you see Al, you know, they don't mention...

F: I, I

RB: (Inaudible) But, uh, we have testimony that you took money from the Bernsteins.

F: Yes. No.

RB: U, I and I, and everything. Don't you think at that point that Ed should have said, uh, testimony that's not true. Shouldn't he have said that?

F: Right. Should have said it's a lie, but, however, what's the difference.

RB: It's a lie. I would have said it's a lie.

HB: I would have said nothing.

F: Over with.

RB: He said nothing. You see, I would, I would have said, "that's a lie."

F: That's in the past. Let me say this.

HB: It's in the past.

F: That's, that's in the past. The, uh,...

RB: You see you didn't hear them when they said that, did you?

F: You see in so far as...

G: Like I said, I just sat. I listened. I let them talk.

F: See and I tell you this.

RB: And then they left him a card they told him (inaudible).

F: Again I say to you now with all due, shall I say, respect or, lack of respect for the advice that you received before, but uh, the best thing to do is to sit and say nothing also. Let me tell you something. Let me say this. They said, and I don't, this is a typical investigative technique. They said, uh, we know all about it. We have it. We have testimony. Let me, let's, let's be honest.

G: So what are they talking to me for?

F: How many times, how many times have you seen in the movies or on TV...

G: Yeah.

F: This is just a standard technique. You've seen it.

RB: They got testimony, they do like hell. If they had testimony they wouldn't come to you.

F: You see the problem is they walk in and they get, they get two accomplices. They get one on this side and they get one in here and they say, he told me the whole story, I don't need you. The next thing you know somebody talks. Am I, you've seen it.

G: Oh yeah.

F: It's a very typical standard ploy. The problem is, and it's understandable, when it's happening to you, you get nervous and you don't think.

G: Naturally.

F: Now, that's why I cautioned Rose, and I cautioned Harry very simply to say nothing they I told them what they were going to be faced with. You see, there are certain things that, that are standard, that lawyers use. I'll give you a typical example just to digress for a moment. Before you go in to try a case. I have always said don't forget when the lawyer on the other side is cross-examining you and he says to you, did you talk this matter over with Mr. Fayer, that your answer is, sure I talked it over with him. Now,

HB: It's tough (inaudible).

F: The reason is this, too many people I've seen it happen, they get nervous, and they say, well, they don't want anybody to get the idea they talked to a lawyer, so they say no. Now anybody looks, you have to be a dope.

G: Excuse me.

F: Really.

G: Yeah.

F: But they get nervous for the moment. You have to caution them. The same old smegieel,(Ph) they were told that. Now let me tell you this that, uh, Frank Fey was up to the office...

Waiter: Are you finished with the bread, here?

HB: Well, you may leave that.

F: Uh, and they told Frank Fey, we know all about what happened to your man, so tell us the rest of it! See. Frank Fey, Frank Fey, you know Frank?

G: Uh, huh.

F: Frank, says drop dead.

HB: He walked out.

F: He walked out.

RB: Uh, that's right.

F: Yeah.

HB: What are you intimidating me?

G: Gutsy.

HB: The hell with you and he walked out.

F: Yeah.

G: Where, where was this at?

HB: Up in right in the DA's office.

F: In Accetta's office, the DA's office.

HB: Where Accetta is, Accetta's office, he says what are you trying to intimidate me, entrap me?

F: He says drop dead.

HB: He walked out.

F. He walked out.

HB: Just like that.

F: Uh, see he has said this and this is the standard ploy. Don't forget I said, we know, let's not kid ourselves, uh, we have for out own benefit, been keeping our fingers on the pulse of this thing.

HB: We know just what's going on behind the scene.

F: The only ones that they have...

G: In other words you got your contacts.

HB: Yeah, don't, don't

G: All right

F: Only ones that they have, who have said anything is KAPRAKI and CARDONA and KAPRAKI is a separate thing.

HB: That's all.

F: And those two are the ones who are guilty and who have admitted it.

G: All right.

HB: (Inaudible)

F: Now, is anybody talking? But, I would really...

RB: Look, (inaudible) to say all right, Ed.

HB: It's a mistake.

RB: Ed wants to say something. What did you want to say all right.

G: Well, what, what about these guys that are you know, going over the New York Regional Office and stuff like that.

F: The hell with 'em.

G: What about them?

F: What about them.

HB: Yeah. What about them?

F: What about them.

HB: Go ahead.

G: Well, I don't know, I don't know what I'm talking about so I, I really don't know.

F: Yeah. As a matter of fact, forgetting, let's, let's forget the New York Regional Office, let me go a little bit, a step further. One of the questions involved is in connection with certain credit patterns. We requested that they go to Washington and pull out four thousand cases every year, and they showed nothing. Uh, at one time the Assistant US Attorney, Accetta, by the way I don't know if you know his name, if they gave you his name or what. Accetta is the Assistant

US Attorney. Accetta made a statement.

RB: (Inaudible)

G: Huh?

RB: (Inaudible)

F: Accetta (inaudible) made a statement.

(Inaudible)

RB: (Inaudible) Testimony from twenty seven hundred Puerto Ricans.

HB: Twenty seven thousand.

RB: Twenty seven thousand.

F: Twenty seven thousand.

G: There ain't that many people in the world.

F: (Inaudible)

RB: (Inaudible)

F: (Inaudible) Number two, now this is another thing he said, let me tell you something else. We can, we can prove that Eastern put mortgages on non-existent houses. So we said to him. (Inaudible) show me one. We'll plead guilty, right now. Show me one. Just one non-existent house. Further

RB: You, you, you.

HB: Wait a minute. Let him talk.

F: Okay.

G: Is he saying this to you or...

F: Me.

G: To you.

F: Stupidest thing I ever heard of. He doesn't know what he's talking about. First.

RB: Then he told you that they, we fleeced the people too.

F: Number one, first of all (Inaudible)

G: It's ridiculous.

F: Any FHA mortgage.

G: Yeah.

F: You then have a title company, you have a surveyor, you have an insurance company premium on this. You think everybody is in it? Come on. Show me the first one and I says you got a guilty plea right now.

G: Hmm.

F: We're still waiting. That's four months, so thi is October or November,

RB: In October,

F: October I don't know even when it was.

RB: Er, uh, Ed's getting nervous.

F: Ed, from what I understand (inaudible) They haven't been able to find anything, so that...

RB: (Inaudible)

G: Hmm?

RB: (Inaudible)

F: Like I say, I, I, I am saying, the district attorney is fishing.

RB: He, he's gotta go back to the attorney.

F: Well, I tell ya this, I, I really, looking back (inaudible).

G: He's sure not acting like a friend, I'll tell you that.

HB: Want me tell ya somethin'?

G: Yeah

HB: (Inaudible) hear me out. (Inaudible) nothing.

RB: What I don't understand...

F: Well, I'll tell you this, now wait a minute. Let me tell you something, he's...

HB: He's not, he's not a criminal lawyer.

F: Now I'll tell you something, really and truly. You made a mistake.

G: How?

F: I'll tell you the mistake you made. He's bluffing and I'm going to be very frank with you. We've always been in the open to you. The Bernsteins know me for I don't know how many years I have been representing them, I don't know if you know the background. (Inaudible)

HB: Rose, twenty?

G: No.

RB: Thirty.

HB: Thirty.

F: Number one, you made a serious mistake in going to a friend.

HB: First

F: I am (inaudible) so if I owe them a favor, I have to do a favor, you do a favor and you still sluff it off. There's a big difference.

HB: There's a big difference.

F: What I'm getting...

HB: Oh, no butter.

HB: Oh no.

HB: Is that butter?

Waiter: Yeah.

RB: Oh, I, no.

G: Do you have one without the butter?

HB: I don't want butter either.

RB: You got a cholesteral problem.

F: The, yeah.

RB: Do you want butter?

G: I never do.

F: The...

HB: (Inaudible)

RB: (Inaudible)

G: Yeah.

F: You see the basic problem is...

G: (Inaudible)

F: Uh, I tell you this, unfortunately in this world, I have a family to support and I have a house to keep, and a car that I run and so forth. You know?

RB: I bet they take the butter off and bring it back.

HB: No, no, they, they broiled it so you won't even notice it.

F: (Inaudible). If I, uh, if I'm not getting paid I can't do, uh, but the easiest thing is to say go in and leave me alone.

G: Yeah.

F: Because this thing and I'll tell you this. If this...

RB: (Inaudible). Good.

F: It's good. Want to taste some of it?

G: Smells good.

F: It's chicken.

HB: What is it?

G: Tastes like a chicken stew really.

RB: (Inaudible)

F: Believe me. Take some.

G: With wine.

F: It is a chicken stew. That's all it is.

HB: Say you'll take that and let him bring (inaudible).

F: See if you like that? I'll take the steak.

RB: Oh, no, no. Let me try it.

F: The, uh,

HB: You'll like it, Bill, You'll like it? Huh?

F: Did you like it? Take it.

RB: No, no, no. It's all right.

HB: Here, change your order.

F: Change your order if you like.

RB: Oh, no, no.

HB: Change your order casue you don't use butter.

F: See, we run into a situation where...

HB: Rose, here's (inaudible)

RB: (Inaudible)

F: Where and I tell you now, and I didn't realize the, the, the background. See.

HB: While I'm waiting, I'll just nibble on this.

F: Look at this as a businessman, and the law is a business.

G: Yeah.

RB: (Inaudible)

F: When you, that's all right. When you go in and when I say to the Bernsteins, be quiet. The Bernsteins are gonna get served with a subpoena. They're gonna have to go down. I'm gonna go down with them. If I'm dealing with a friend of mine, I'm wasting time. When I deal with them, I submit a bill. Lets be blunt.

G: Sure

F: You know the story. I don't have to kid you.

RB: Yeah, but I mean, he, he, he advises me, uh.

F: Now I have, uh, I, I have,

G: Thank you. Yeah.

F: I would, I would give them and the difference is this. I will give the best...

HB: You want to do me a favor please? Take this out. Take that out.

Make sure it's hot. Ice cold. All right my good fellow bring (inaudible)

F: I would give the...

HB: Ice cold. Some ketchup here, please.

Waiter: Mashed potatoes please. You have baked potato (inaudible).

G: Yes, pass the potato. You're having baked potato, aren't you?

HB: No

G: No, okay.

F: I'll give you the best professional advice I can. Why, because I can give it because I am being paid. I'm an attorney. I'm working for a client. When you start to do it for a friend. I didn't realize this is the problem. Now he is looking to save trouble. Save time.

G: In other words what you're telling me is you get what you paid for.

F: You get, all right.

HB: Exactly.

F: There's no where (inaudible)

G: No such thing as good and cheap, huh?

RB: I, I didn't know that he was doing this Al. I told him to sit tight and do nothing.

F: I, the reason that I was shocked, really shocked I talked to the U.S. Attorney and I (inaudible).

HB: He may not even be, he may not even be his attorney, so why the hell at the time yestereday, that's enough.

G: Yeah,

HB: May not be for a month if you are.

RB: They went, they went to you to see what they could get out of you.

G: Yeah but,

RB: That's what they went to you for.

G: Yeah. (Inaudible)

RB: They're not interested in (inaudible), they interested in everybody else, but if you're going to (inaudible) then you're (inaudible).

HB: You're just a byproduct of the whole thing and then all of a sudden you're the guilty person. All of a sudden you become...

F: Well, that was stupid, but...

G: Let me take the butter from you.

RB: (Inaudible)

F: Because you must remember this. You are...

RB: Good, huh?

F: Yeah. Excellent. You are the, uh, the small fry here. You know what I mean? Really.

G: Yeah, that's the truth.

F: You're gonna get hurt. For no reason at all. You're foolish

HB: In other words they went out to...

F: Foolish to, to hurt yourself.

G: Well what's the possibility of this whole damn thing just finishing up or...

HB: It will finish up.

F: Well, I'll tell you this.

G: Yeah, but when?

HB: The thing will run out of steam.

F: Want me to tell you this?

G: What?

F: I'll tell you this. That's a question I don't answer.

HB: Rose, let me give you some of this. The plate's very hot. Let me, you don't want any?

Waiter: Would anyone care for anything to drink with the meal?

G: No thank you.

HB: Want some beer (inaudible) Ed?

G: No, no, no, thank you. Never have it.

HB: Ed, uh, how about some of this spinach?

G: Very good. Thank you.

HB: Uh, Ed, spinach?

G: Yeah, a wee bit. Thank you. Thank you. That's great. That's enough, just a taste.

HB: Then there's carrots there.

G: Thanks.

F: Say what the possibilities are.

G: All right, here's what I want to know

F: It depends on...

HB: Rose?

RB: I'll take some of that spinach.(Inaudible)

HB: (Inaudible)

F: No, no, spinach is (inaudible). It depends on...

HB: Want some of this Rose?

RB: No.

F: Basically the...

HB: How about this?

F: Those people in your position...

G: Yeah.

F. Might not, if we assumed, I don't know this to be a fact, because it hasn't happened yet.

G: Yeah.

F: We assume that everybody sits tight...

RB: Nobody says anything.

F: Then he doesn't have a case. Doesn't have...

HB: He hasn't any.

G: No?

F: On the other hand...

RB: If somebody's gonna talk...

F. Somebody, this is why I am here tonight.

If somebody opens up, then he's got the beginnings of a case.

G: The beginnings.

F: That's right.

HB: This has been going on for six months and he can't find any openings, so far.

F: Like I say, so far.

HB: Six months.

F. He's playing with this. More than that, August.

HB: (Inaudible)

F: So far he has been playing with this...

RB: August, September, October, November, December, January, February.

HB: A little before that too. A little before that too.

F: Playing with this since August. He has found no one.

HB: No one.

F: The only way he got these two is because they have been, been caught in the State Department hearings. Now other than that he has nothing.

G: Hmm.

F: So...

HB: Her evidence don't mean anything. Their testimony don't mean anything because they're crooks.

G: This, you said these two you're talking about this, uh, Cardona and...

RB: Kapraki and Cardona.

G: Well what the hell is the State Department doing with them? What the hell went on there?

F: What happened was...

HB: Automatic.

F. The State Department automatically held a license revocation hearing. But the State Department, if everyone sits tight there won't be any evidence. Now I know this there are several mortgage companies involved you were asked about.

G: Yeah.

F: I assume.

G: Yeah, they mentioned a few. I told you.

F: They have all said nothing.

RB: No, they didn't have any (inaudible)

F: They have all, I told you that before, they have all said nothing.

RB: Twice.

F: Now, they're in the position where they're reaching out for everybody.

G: Hmm.

HB: Cause they're desperate. They can't find anybody.

F: The reasoning, I cannot understand, they might be giving you is this.

RB: So they're (inaudible)

F: Let's assume, for argument's sake, they get hold of "X".

G: Yeah.

F: Some other appraiser.

G: Yeah.

F: After they get him he admits it.

G: Uh huh.

F: Now he admits it so they tie him them in. But that doesn't affect you. The only one that can affect you is you. Now this is what's puzzling me. I still say, I still say you're controlling your own, controlling your own destiny.

HB: I always said you were so methodical.

G: You've gotta trust somebody, Harry.

RB: Well, Ed, if that's the way you feel about it.

G: You know what I mean I gotta, uh, uh, I don't what.

HB: He gotta ask someone. He got the wrong advice.

F: It isn't a matter of trust, see?

G: Well, maybe the guy isn't qualified.

F: He just isn't qualified. This is a basic problem.

HB: He isn't qualified. He wouldn't want to harm you.

G: Hmm?

HB: He wouldn't want to harm you.

G: No, I'm sure he wouldn't.

RB: Well, he is gonna harm you. Why is, uh...

HB: He's got two guns (Inaudible) this and the Internal Revenue Service.

G: Hmm.

F: Who's gonna save you? I just can't understand, you aren't...

HB: If you feel...

F: What you're doing is you, you're giving them a case on yourself.

HB: Just for yourself and no one else.

G: Like committing suicide, ain't it?

F: I'll tell you this, as far as the Bernsteins are concerned, you're creating a lot of trouble but...

RB: We're gonna deny it.

F: They'll deny it.

RB: (Inaudible)

F. I'll tell you right now, they'll deny it. So,

G: Well, I'm just listening as I say there are some things I would say to them that I wouldn't say in front of you naturally.

F: Naturally, but what I'm saying is (inaudible) so that my way of thinking, the whole thing, uh, really puzzling.

RB: The only thing is...

F: That's the sort of a thing...

RB: So what does he have to do now, Al?

F: I would really and truly, tell you what I would do. I will give you some gratuitous advice, which is not really worth nothing, especially with inflation. Ha ha.

G: Ha ha.

F: I would say to your friend. And this is the right thing, he spent a little bit of his time. I'd give him a check. I don't know how much time he spent. A hundred, two hundred dollars. Whatever it is. Give him a check. Tell him you'll think it over and so forth, and just sit tight. If you're called at that point...

RB: But tell him not to do any investigating (inaudible)

HB: Don't do any investigating on his own, don't do anything. Just don't worry.

F: Please stay out of it. Please.

G: Stay out of it.

F: At the point, the point...

RB: Tell him not to do any investigating.

HB: You can tell him it may be dying down.

F: Right. If, but if you are subpoenaed...

HB: Then you'll call me.

F: I would make, no, that's I'm now talking about a horse of a different color. I tell you now if you are subpoenaed, then...

RB: Then we'll get you a good man.

F: I suggest, you get in touch, but I would suggest that you get yourself a good attorney. A good one in the field.

RB: Not, not this guy.

F: Not, not, not this one. I and this is without even, uh, knowing the man's name.

HB: He may be the most wonderful guy out there for that type work.

F: But, see, you're in a position, I tell you now, and, uh, the Bernsteins have told me certain things about the expenses. Let's put it that way. You know about it. I do. Uh, you're not playing a game. You're not playing, you know, marbles.

G: Well, I know that.

F: You need somebody that knows his business. That can really protect you. You know somebody who's gonna take an easy way out and throw you to the wolves, anybody can do that. That's easy. But you want somebody who is good and, and, is...

HB: This time, it's pros you need.

F: Right. If you are served, at that point, then you can get somebody who is good. Somebody who knows them in the field and what their reputation is.

HB: Say, say, say you were served on a Thursday.

RB: That's what I want to say. This I don't understan

HB: He says, Al, Al, Al, Al, Al

RB: (Inaudible)

F: He can't disclose what you're doing, that's not (inaudible)

HB: Al.

RB: He still shouldn't, tell him even with a lawyer. Even with a lawyer.

HB: Even with, say you were served on a Thursday and say.

G: I'm sorry I didn't hear.

RB: (Inaudible)

G: Yeah.

RB: (Inaudible)

G: Yeah.

RB: (Inaudible) even with the lawyer. There are certain things you do not say. Do you understand me?

HB: Cause it never happened.

RB: It never happened. There's nobody, nobody can prove it. Nobody. Let me tell you there's no way they're gonna prove it. How do you think I have been (inaudible)

F: That's what I said (Inaudible) Getting back...

RB: (Inaudible).

F: You know he was misled.

RB: Al, isn't it true, in order, in order to, in order to prove certain things strictly, wouldn't there be a third party to see.

F: No. You see the thing is this. Not necessarily a third party. We could happen to have a check.

B: You'd have to have a check.

: You'd have to have, uh, the bank deposits. You would have to have, uh...

B: Yeah, the books, to to explain.

: Corroboration.

: Yes, Corroboration.

: Some kind of corroboration.

: This is why what, when you, you said to me, at the outset what really started it, that you were told, that they made a naked an accusation is sufficient. Notin the United States of America. Not here.

B: (Inaudible).

B: I hope you feel a little bit better?

G: Yeah, but, uh, I'm very disappointed in my friend. But better to be disappointed than damned, huh?

F: That's right. I was really amazed, truely I, was. Like I say I would say I'd give him a check.

G: Yeah, naturally.

F: He's entitled. Thank him. You know what I mean. Otherwise you lose a friend.

G: Hmm.

F: But uh, uh,

RB: Let him, let him pay him. Let him be thankful, he gives him a check.

F: Give him a check for, absolutely (inaudible).

HB: Give him a check for $100, he's done nothing on the case..

F: There is nothing, let me tell you, there is nothing wrong. You've decided to consult an attorney. Pay him a hundred or two hundred, whatever you...

RB: Yeah, yeah.

F: That's all. And then, uh,

RB: Yeah, but, then, uh.

F: Nobody, uh, nothing wrong with it, and you at that point you keep your, your friend. You, you keep him happy.

A 409

G: Yeah.

RB: And he can't talk, thats your lawyer he can't, uh

G: Yeah.

F: That's, uh,

HB: Privileged.

F: In fact, but this is, uh,

RB: (Inaudible)

F: Like I was really (inaudible).

HB: Al and I are on a friendship basis.

F: If the time comes, we're on a friendship basis not because I like them but because they pay me double. Ha. Ha.

HB: No, no. But besides that, we pay, we pay the fee. He's kidding around with you.

F: I'd love...

G: I'm glad he can laugh.

RB: You're right. You're right.

F: Government attorney's office.

HB: (Inaudible)

G: Yeah.

F: May I tell you this?

HB: (Inaudible)

RB: (Inaudible)

G: Yeah,

F: Ed, I want to tell you something.

G: I tell you I haven't, since I talked to you guys I ain't been sleeping.

HB: (Inaudible)

F: May I say this?

G: You know I ain't...

F: Really without kidding around is kidding around.

G: You take this stuff in stride you see, I don't.

F: Let me be very serious with you now.

G: Yeah.

F: There was, there was a time, yeah, when this thing came about.

RB: (Inaudible)

F: And I picked myself up one day and I'm kidding around, but really our friendship goes back a lot of years. There are many things that I have done, many things, believe me, they know and I know, that I have done, that are not even reflected on the bill.

G: Yeah.

F: I'm kidding around with this thing. But there came a time some months ago, when I was talk, I was on the phone, and I said to them "All right now", I was a little shallow I was and I hung up and I said I'm gonna come over. Let me sit down and talk to you. They were very nervous. Just as you are.

HB: You're no different than we were. Believe me when I tell you that.

F: Right? Remember I came over to the house, and I sat down. I don't remember if it was a Saturday or a Sunday, whatever it was and I said let me tell you something. I said, I know you're upset, I know you're nervous, I know these things are preying on your mind. I told it to them, there's one thing you must do. You're gonna have to learn to live with it. You're in a limited situation, gonna take six, eight months, a year, I don't know how long.

HB: Five years, three years.

F: They're gonna play with it.

G: Hmm.

F: It's a hard thing to do, Ed. It's difficult I said to you and I tell you now, I give you my word, as I said to them, something or things may come out, things may appear in some manner, but I tell you now, that you are not going to be hurt, really hurt, by this. Hurt in the sense of being convicted or anything of that sort.

And you're not.

For Christ sake I says look, I says, this is something that has to be proven and has to be established. It is not that simple, Ed. Sounds great, But they're gonna need all sorts of (inaudible) at this time.

So don't be so goddamned nervous.

I didn't even bill you for that advice. Ha ha.

RB: Oh, you gave me that for nothing.

HB: That cost you nothing.

F: That cost you nothing. That was...

But you see you have to, and I tell you now, and I'm telling you this really for one reason, because they say you're a friend of theirs for many years. You're going to have to live with this,this sword hanging over you for a while. I don't know how long.

G: Oi Vey.

F: It's a, it's a situation, but the only, the only one and I tell you now, there is only one person who can hurt you and that's you. And I tell you, you must also remember this, I don't know how much reading you do, or how many shows you see, movies, or TV you,

you watch. You will find that many of these things are based on (inaudible). Stop and think how many times you have heard attorneys say, whether you read Earl Stanley Gardner or any of the others, don't say anything.

RB: May I have some, Waiter?

F: How many Earl Stanley Gardners have you read? Or Perry Masons?

G: Yeah.

RB: May I have some coffee please?

F: What is the first advice to a client?

Waiter: Coffee?

F: You know Earl Stanley Gardner was a lawyer.

RB: What do you want, coffee, too?

HB: What do you want?

F: I don't care.

G: Black coffee.

Waiter: Black coffee?

F: Black. Black? Four coffees. I gonna have a little milk on the side.

F: I don't want any dessert.

RB: Why they got some home...

B : They got good dessert here.

aiter: Take a look at the menu.

: You keep me on a diet so once...

B: Give him half a grapefruit.

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F: No, no, I don't wany any. Just get me the black coffee.

RB: What are you gonna have?

HB: They got good parfaits here, uh.

Waiter: Choice of sundaes, sherberts.

HB: Good pies here.

Waiter: Apple pies? Cheesecake?

HB: Cheesecake is delicious here.

G: A bissilla casa - kuchen, huh?

RB: Huh?

G: Casa - kuchen ist der besonderres hier, nich wahr?

RB: Ha, ha.

HB: Did you hear what he said?

Waiter: No.

HB: Tell him.

G: Cheesecake is your specialty, no?

Waiter: Yes, thank you.

HB: Tell what you said, tell him.

G: Casa, Casa - kuchen.

RB: Casa-kuchen

G: I'm not a Deutsch.

RB: No.

Waiter: (Inaudible)

RB: No, they go in the back.

F: See, see, the thing, and, and really if you read any of them, these are things that are, are basic, so basic, that, uh, uh, I'm amazed sometimes that, that people ignore them, you see them, you hear them.

G: I know it's not a matter of just thinking though, sometimes it's a question of reacting.

HB: Calm down.

F: Wait a minute, I mean you, you, you lose your objectivity. It can happen to me too. That's right I can understand it.

HB: We were very nervous at first (inaudible) the indictments come down, takes three, four or five years (Inaudible)

F: Now I tell you, may I interrupt you sir?

HB: Sure.

RB: Yeah, what are you...

F: Let me tell you something else. I have said to them and I'm gonna say this to you too. Everytime you hear somebody gets a subpoena, you should say good. I'll tell you why.

RB: That weakens their case.

F: Because it means he still hasn't got a case.

RB: Sure.

HB: Up...

F: As long as he is still subpoenaing, he hasn't got a case.

HB: Up to the last Thursday, they subpoenaed two more people, ROY SCHILLER and PAT BUCKLEY. Up to the last Thursday.

RB: Yeah, your, your...

F: See, this is why when I heard this thing I was so shocked because last Thursday...

RB: You above all.

F: SCHILLER and somebody else was down there. He doesn't have a case.

HB: You see, now he's going to the bottom of the barrel.

F: If you hear, when you say for example, New York and the regional office, do you want me to tell y something? The more I hear it, they're in the regional office.

HB: They don't know where they're going, what the hell did we have to do with the regional office?

F: When I get it back, the better it is for me.

HB: What did we have to do with the regional office?

F: Because they don't have it and this is why, you see, it is better to think it's better to think logically.

G: Hmm.

HB: You always think logically. You're the (Inaudible)

RB: (Inaudible)

F: Why would they if they had a case, why would they keep a subpoena. See you must remember this. Let me explain, I don't know if you're familiar with the procedure. What happens is thi The Grand Jury has one function only. They hand down an indictment. The US Attorney or the DA as the case may be, county or what not, appears before the Grand Jury and he has to establish reasonable grounds that a crime has been committed, and that X represents the, was involved in the crime. That's all he has to do. Once he has that he stops. He would be foolish to go further. Tell you why he would be foolish and now I'm talking again professionally. If he goes further we know who he's calling. We know who's testifying, so we begin to learn more about his case. Follow me? (Inaudible).

G: Yeah. In other words, you, you know what's going on down there.

F: That's right. Now, the more people he calls, the more we know about the case because as long as he needs a case he won't stop calling people. He's not gonna let us know. Who else can find out who goes in.

G: Yeah, but like you say, how long does he keep this up?

HB: (Inaudible)

F: It depends, it depends, want me to tell you something? It depends on how long his boss wants to let him play with you.

G: Well, yeah, you say better for you, but you know, let's look at it objectively. I'm here and I'm thinking of me right? Okay,

HB: I told you everybody. So think when you say we.

G: So, okay, so, all right, so let's say they, they call me down. Right? If I say something I'm in trouble, if I don't say nothing, I'm in trouble. One, one way or the other you're out of a job.

F: That's right. That's where the decision has to be made.

G: Yeah, so one way or the other you're out of a job at that point.

F: That will be up to them.

HB: That, will, we got, we, took care of that already, Ed.

G: Yeah.

HB: Yeah. All wrapped up.

G: This I don't need to be worried about then?

RB: No, no.

G: Huh?

RB: No, no.

~~R~~: HB This you don't worry about. your income, comes in.

G: You're sure about this?

RB: Positive.

HB: Your income comes in the same way.

RB: Yeah, so where do you go?

HB: And all your benefits.

RB: You go just where you wanted to go.

G: Huh?

RB: Where did you want to go?

G: Florida.

HB: That's where you're going.

RB: That's just where you're going.

HB: Another corporation.

RB: Just for you.

HB: Just for you.

G: Oh, I see, not with the Government in other words. What the hell is the difference. No big deal.

RB: What's the big deal?

HB: All right. You all set?

G: Sounds interesting.

HB: No, he's going to go Florida for me.

G: That would make Terry happy.

RB: All right.

HB: Want me to tell you something. If you want to go to Hawaii.. (Inaudible)

G: Don't tell her that, she'd run out of town. Ha, ha.

HB: All right, I'm just, uh, now we'll just uh (inaudible)

F: You see, the (inaudible), the, uh.

RB: This is the ignition key. (Inaudible).

F. The, see, that is your, that's when you ..

G: You gotta play some of it by ear, in other words.

HB: Ed.

F: Yeah, when you originally made the statement you made the statement, that you were in a different...

G: It is good cheesecake.

F: Position (inaudible).

RB: (Inaudible). I didn't want any.

F: You said you're in a different position. That's the only difference in your position.

RB: This coffee is not hot.

F: That fact you say...

G: Oh, it's hot like fire. You're gonna burn yourself.

HB: You know, Rose, that's the whole problem. That's why you have stomach trouble.

F: You know what I mean?

HB: Now I know, now I know why

G: Yeah.

F: Other than that, it's, it's the same situation. We have others and I wish the hell that we would had won. This one concerns us too. And I, I keep saying to Rose every time they call somebody down, it means they still have nothing. It's a question of how much time and effort and money does the boss. The boss is the US Attorney, a fellow by the name of Morse. How much time does he...

G: Who?

F: Morse. How much does he want to spend on it. And the minute he says, we're through. It will be over.

RB: Look at, Ed...

HB: Ed, Ed.

F: So far he's got nothing. And, and I'll tell you this.

HB: Al

F: (Inaudible). He hasn't turned up a thing.

HB: Al

F: With all the FBI agents.

RB: You know what I'm gonna tell you. You know what I'm gonna tell you.

F: Yeah, I know.

RB: Hey Al. Hey Al. You know what I'm gonna tell you. He looks better already.

HB: You know, Ed...

G: I ate dinner.

HB: Ed.

RB: He looks better already.

G: I ain't been eating, I tell you that.

HB: Ed.

RB: No.

HB: No.

RB: No, no, no.

HB: I'm working behind the scenes.

G: Huh?

HB: I'm working behind the scenes.

RB: Ed, Ed,

G: Yeah.

RB: Ed, Ed, the last thing...

HB: If you say anything, it blows everything.

RB: The last...

G: Yeah.

RB: Wait a minute, the last thing he said made you feel better, too.

G: Yeah, sure, go to Florida.

RB: Now, now you know, you know. (inaudible).

HB: Ed, Ed.

G: Yeah.

HB: Ed, this is you.

RB: You step right in (inaudible).

HB: You stop here. Over there, you start here. You see how I've got them close.

RB: (Inaudible).

HB: Not even one day. If you want to take a week, two weeks vacation before you start. You know with me. Did I ever reneg on anything?

G: No, no.

RB: No, no, no, no, no.

HB: I could use you for (inaudible).

F: As a matter of fact, we're leaving, we're leaving for an extensive...

HB: If you, no, now...

G: No.

HB: Let me tell you what I can use him for..

RB : He knows that.

F: The understanding is, matter of fact right now.

RB: We got two offices.

G: Where, down there? You got two down there?

RD: Yeah, they opened one in Orlando.

G: Orlando.

HB: We got Coral Gables, Orlando. Now we want to go, further up. We're gonna go into Georgia.

F: Atlanta.

HB: Atlanta.

RB: Atlanta is next. So you see...

G: Where in Georgia?

HB: Jackson, we want to keep on going (inaudible).

F: Atlanta. Atlanta is very hot.

G: I know.

F: I'm going down there, uh, Monday.

[illegible]: Sure, what we're doing, you see. We need...

HB: Ed, (inaudible) assigned that we don't know.

RB: Wait a minute.

HB: Who would I rather have, an outsider I don't know or you, who is a close friend. Now answer that.

G: Yeah.

HB: Enough. All right, Make sense?

F: As a matter of fact, let me tell you something, what shocked me, last week somebody said, two weeks ago, I was down in Florida. When was I down, about two weeks ago. I came back from Florida and I just had left DOUG HOMBERG. Somebody said to me, somebody had said to me...

HB: That we let go.

G: You mean he's with you now (inaudible)

RB: Sure.

F: Do you know how long he has been with us? Then he said to me I understand DOUG HOMBURG left. I started laughing.

HB: I heard the story, since I was with him.

F: Left? How could he leave, I was with him on Wednesday, I left. Oh, this is Thursday, I just flew up. We had lunch together. He's running the, uh, the entire processing section.

HB: Oh, fill it up please.

F: He's running the entire processing down there.

G: Yeah.

F: Ah, uh, you know, so that's uh, there's no reason (inaudible). Say, that's a hell of a funny story.

HB: Yeah, that story was just (inaudible). Just a second, Rose, DOUG HOMBURG. Now first it starts with Al. Someone tells Al, Doug Homburg is no longer with us. Where did that rumor start with the FHA? So just that day I'm downstairs, with Don Carroll went, Don Carroll went to, to speak to someone in the, uh, office, Mike Jancowitz (ph) comes over to me. He says Doug, I hear isn't with you anymore. I says I only heard that rumor a little while back. Up to twenty minutes ago he was with us. I don't understand. So, Doug says well how does uh.

G: Boy that's hot.

HB: Mike says this to me.

G: No, that's enough. I just wanted...

HB: Well I said, how come. He says well my friend called up. He knew that Doug Homberg was with Eastern. Now I want you to know that VA is in Jacksonville. So he calls up Doug Homberg. He says someone says to him, oh, he's not here, he's in Jacksonville now.

G: Oh, I see.

RB: He went up to Jacksonville to see the FHA.

F: The rumors, the rumors started.

G: Right away, right away a new rumor.

RB: Now let me tell you something.

~~F:~~ G Funny as shit.

HB: Now how do you like that? No malicious gossip.

F: May I say this? (Inaudible).

G: Dynamite. No, no, no, but this is the way things happen, you know, perfectly innocent remark, right? They say he's not here.

RB: E.G. now listen. This you'll like. This you'll like. Hey, give me.

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G: Yeah.

HB: (Inaudible).

RB: (Inaudible).

G: (Inaudible).

RB: All right, Al, tell him what you gotta do. I tell you, now, let me just, let me (inaudible). Ed, do you remember, uh, were you in the service? I said what were you in?

G: Huh?

F: What were you in?

G: Army.

F: I was in the Navy. Didn't they, didn't you have a, uh, a statement that I volunteered.

G: Never volunteered.

F: Cause that's the situation right here(inaudible).

G: I volunteered once and I got pushed out of an airplane for it.

F: There you go. What were you, what, a paratrooper?

G: Huh? Demolition, radio.

F: I was UDT.

G: Huh? You were UDT.

F: Yeah.

G: Oi Vey. That's worse than me.

F: Worked with demolition.

G: Yeah.

RB: Now, now, now listen. What's it gonna be? (Inaudible) attorney.

F: All right, pay him. He's a friend. It's a family matter.

G: Natur, naturally I would.

RB: Now what should he say to the attorney. Tell him not to do anything?

F: Tell him you thought it over. You decided to just sit tight for a while.

G: Sit tight.

F: Do nothing and you'll let him know but you feel you want to pay him.

HB: (Inaudible) I understand there may not be nothing doing. Sit tight. That's all.

RB: Ah, tell him sit tight and do nothing. Sit tight. You don't want him to do anything right now. Leave it alone You don't want to do anything now.

F: Tell him don't call, let, let it sit, if in the event you are, in the event you are subpoenaed (inaudible) then you can tell him no. But you better tell him no.

RB: He's gonna make it impossible. So he doesn't go and do things on his own. We can turn around and sue him, but he's a friend of yours. (Inaudible).

HB: Tell him not to do anything. Drop it right here and there because the (inaudible) it is under control.

F: Tell him to drop it. In the event you are served with a subpoena, then we'll see about a top drawer. Then you're, then you're, then you're top drawer man.

RB: If he tells you you don't owe him nothing or anything you insist on paying him something.

F: No he's entitled to it. What's right is right.

RB: I know, he's (inaudible)

G: Yeah. Well I would, I would pay him anyhow. Yeah.

F: No. He's entitled. That's right.

HB: The man is entitled to it, therefore he should get it. Friendship is friendship, but...

G: No. Oh, he knows, he knows damn well that if he says no to me I'll take it to the house and give it to his wife. He knows that because I, I wanted to...

F: That's right.

HB: Give him a check.

F: (Inaudible).

G: You know I used him as an attorney and uh, he, he didn't want to take anything for it. No he say forget about it. I went down to his house wife and left it with his wife. That's embarrassing thou

HB: You always say it's for legal services

G: Yeah.

F: Now, uh, uh, again, as a friend, uh, with (inaudible) then you get (inaudible).

RB: He'd better do it right but he'd better do it right away. He better do it right away.

HB: See him tonight Ed. Go right from here over there and then you call me about the, uh,...

RB: (Inaudible)

G: Huh?

RB: Did he (inaudible), did he (inaudible)?

HB: Don't say he didn't talk too much.

G: No, no, no.

HB: And, uh, you can call me around 9:30 about the, uh, the engineer with the hydrostatic. condition.

G: Huh?

RB: There are certain things you don't talk, you know.

G: No, no, no. No, especially from what you say on the telephone. You know, uh...

F: You never know.

G: Huh?

F: You never know.

RB: I think what's the best thing to do instead of calling up, let him, give him your number, let him go outside to a coin booth and call you I think (inaudible), I don't think he should call from home. Don't you think I'm right?

HB: (Inaudible) number, talk to him, tell him (inaudible). So what's the big deal.

G: No big tsimiss (phonetic) Yeah. I'll call him, call him collect, eh from the phone booth. What the hell is the difference?

RB: Yeah, call him from the phone booth.

G: Hmm.

RB: (Inaudible)

HB: Give him the two hundred dollars Al.

RB: Cause to Al you can talk.

HB: Al you can talk to, but, uh,

RB: (Inaudible)

G: Hmm?

HB: You can talk to Al (inaudible)

RB: (Inaudible).

G: These are both in the same place?

F: Yeah, at the house.

HB: No, that's those two houses.

F: Home numbers.

G: It's 914. Both 914.

F: Yeah.

G: That I can remember.

F: Yeah 914. Yeah.

RB: Ed, Ed, Ed, Ed.

G: Yeah.

RB: If we, if we have the (inaudible)

G: Huh?

HB: (Inaudible)

G: Well Al isn't gonna represent you then?

F: I have, I have representatives, I have engaged, I'm, shall we say directing things. The theory is I, we have engaged various attorneys for Eastern Service Corporation.

RB: We, we've engaged a number of attorneys for people (inaudible).

G: I see, Oh, I see. So it would be in conflict.

RB: It would be a conflict of interest.

F: I don't want to be involved with anything that happens here. I don't want to involve Eastern Service Corporation.

G: No.

F: Even a hint.

G: Yeah, that's right.

F: Rose, Rose, remember is a separate entity completely.

G: Yeah.

F: I represent Eastern. I have somebody representing Harry and Rose.

G: Right.

F: And somebody representing Frank Fey. And somebody else.

RB: And Florence Behar (inaudible). Yeah Florence Behar (inaudible).

HB: We got three different attorneys. We got her the attorney.

G: You're gonna run out of talent one of these days.

RB: Ed, Ed, Ed.

F: I'll tell you this...

G: I hope you don't, I hope you don't save the, the worst one for the last.

RB: Ed, Ed.

HB: No, no. Wait a minute.

G: Huh?

HB: No one knows, no one knows our...

RB: Ed, Ed. (Inaudible), good, because everybody is to tell the attorney (inaudible).

F: I never heard of you.

HB: We don't know nothing. We don't even know your name.

F: I know. What I know is this. I have a long standing relationship.

G: Yeah.

HB: They don't know anything.

F: Like I say this is, uh.

HB: They don't know, don't let them tell you we know, come on tell us everything. All right look, remember when I called you.

RB: Remember I told you that Rita had said that she saw you come up (inaudible).

G: Yeah.

RB: She also said that she saw Mike Jancovic.

F: She also said that she saw Condon up there.

HB: Condon was up there.

RB: She, she also said she saw Lawrence Condon up there.

F: Condon was up there.

G: Are you kidding me?

F: That's absolutely true.

G: You mean he's died and he's in the box. They're holding the wake. That's the only time he'd be there.

F: Absolutely. She testified to that, and...

RB: No, Condon was up there.

HB: You know who he was with?

G: You're kidding.

HB: He was with Fred Martin that time to look at the plans. He was with Fred Martin that time.

RB: Condon was up there. Fred Martin, Fred Martin...

F: Fred Martin came up to see him....

HB: He used same (inaudible)

G: Oh?

RB: Ed!

F: Fred Martin came up to look at the plans.

HB: He said come on. We'll take a look at the plans.

F: She stated that. yes. Condon is at the opening up to look at the plant that we would be building.

G: You know, now that you mentioned, uh,

RB: See, you see...

HB: What?

G: Fred Martin did come to Condon's luncheon.

HB: Oh yeah?

G: Oh yeah, yeah, yeah. Yeah saw him there, said hello to him.

HB: Fred Martin...

G: Came to the luncheon.

HB: You know Don Carroll and I are pretty close. I don't know if you know that.

G: How's Martin doing now though?

HB: I don't know. I don't speak to him. You know Don Carroll and I are close. I think you know that.

G: He came out of left field. I didn't, uh, and he is in, he lives in my neighborhood.

HB: I know who his rabbi is too.

G: Huh?

HB: I know who his rabbi is. He and I went to his dinner out in Suffolk.

G: Yeah.

HB: You knew that.

G: Well, you took, you told me about it. I didn't, I didn't know that you had been out there.

RB: I well, we went with him.

G: Oh yeah?

HB: Yeah?

RB: He wasn't afraid to go with us.

G: Huh?

RB: He wasn't afraid. He's, he's known me for 15 years.

HB: Do you know that I'm, did you know I'm in the office? Did you know that he stayed at our place once (inaudible)? I don't know if you know that or not.

G: No. I don't know.

HB: Oh, sure.

G: Well, you see he, he, he's new so he's a little, little aloof. Yeah I know that he's with Lawrence Cedarhurst.

F: Did you see our personnel down there, today, training him.

G: Today?

HB: Yeah. We, we showed him what the insurance is about.

G: I wasn't even in the office today.

HB: We showed him what the insurance is about.

RB: Are you, are you,are you still in Brooklyn? Are you in Brooklyn again?

G: I can't get out of the goddamn place.

RB: What are you doing in Brooklyn?

G: Huh?

HB: Anything you want I'll do for you.

RB: What are you doing in Brooklyn?

G: I'm doing a lot of reviews. Occasionally an initial. Uh, like typical stuff, like now tomorrow I got two cases that they were committed on, and no let's see one of them was committed on and it expired. Excuse me. The other one was rejected. In any event they both expired.

Even, you know the rejection expired and now al
or a sudden we get two new applications, so
we pulled the old files and they sent them
out with them. Now they've gotta know what's
what's on 'em. I'm doing a lot of review
work too. Some of these guys are real, you
know, meatheads. They don't know what the
hell they're doing.

RB: Yes. Sullivan, uh, Sullivan and Kudelka are running the show there, huh?

G: Yeah, but I understand Coughlin took over...

RB: Mike Jancovic

G: Yeah.

RB: They're gonna kick him upstairs.

G: But doesn't, yeah, but doesn't that jump him over HC, or is he different spot like...

HB: I'm the one that (inaudible)

G: You mean you did Coughlin a favor?

HB: Yeah, yeah.

G: Really?

HB: He worked (inaudible)

RB: Listen it was terrible in there what he done.

G: Oh, you're telling me

RB: He was, he, he was no gooding everything. Now that place is the best thing that's gonna be for him.

HB: You know, we have, shh!

G: He'd still be in the same position.

HB: Shh! you know we have (inaudible), he asked me the set up. Who's who and who's who (inaudible) and who should go here and who should go there. Why do you think MIKE JANCOWITZ (phonetic) is where he is.

G: Well MIKE is good, I mean, MIKE is qualified.

HB: All right, so, uh,

G: And so is HERBIE. He's long overdue.

RB: Well HB. Yeah.

G: Yeah, he's long overdue for that.

RB: HB was deprived of that spot a long time ago, wasn't he?

G: He's a good man. He, he, yes, he was, he was really deprived. He was cheated on that, really. He deserved it a long time ago.

RB: And he says he knows who cheated him.

G: Yeah, 6, 7 years ago he deserved that spot.

RB: Yeah.

G: Damn shame.

RB: Yeah, but listen, let me tell you something. If's gonna make you feel any better your not the only one that the FBI been talking to.

G: No?

F: Oh yes, that's right. That's...

G: You mean in my outfit?

HB: (Inaudible)

RB: Don told me, Don Carroll (inaudible).

F: That's right. Yeah. I heard that.

RB: (Inaudible).

G: Oh, yeah.

RB: Yeah.

HB: In the courthouse you see, Don comes out, I want to tell you something.

RB: He says, goddamn it on the new projects coming in, he says, I'm gonna find out what the hell this is all about.

HB: Don Carroll,

RB: I want them to leave my boys alone.

HB: Don Carroll comes up to my office about twice a week.

F: I thought, I thought that he knew.

RB: Naw, he didn't know. He doesn't know anything.

HB: He comes into my office twice a week. He and I, Waiter.

RB: He told me, he told me.

G: Sure.

RB: Huh?

G: Sure.

RB: I bet you Cronin might even (inaudible).

G: Well, he's, uh,

RB: Now listen...

G: You don't worry about him.

HB: Now this is what I want you to know, I want to tell you, and I can tell you right in front of (Inaudible). Our attorney in New York City says come tell me everything. He says did you ever pay anyone.

RB: What?

HB: You think we're crazy. Never a penny at Christmas or nothing. I wouldn't even give a cigar.

G: Uh huh.

RB: Oh.

HB: He says are you sure. I says that's right. Anyone who ever said it they're a damn liar. Let them show me a receipt. Let them show me anything.

G: No, that's all right. Who's gonna show a receipt? Who got, I, I don't have a receipt.

HB: That's right. Show me.

RB: We're complete...

G: No one's got a receipt. Right? Huh?

HB: With our own attorney.

RB: Ed, you see what you did to (inaudible).

G: You've asked me for receipts?

HB: Wait a minute, our own attorney, our own attorney.

RB: (Inaudible) What you did your doing to yourself

G: Huh?

RB: Don't you see what you're doing to yourself.

HB: Your attorney can say, your attorney can say you did this, that and the other thing and you will be wrapped up in an Internal Revenue problem. Right? See you're admitting to something that we never even gave you and then you're admitting. So then the Internal Revenue, I don't care what he says, we never gave you. You say he gave, where's the tax money.

G: Yeah.

RB: You're on the hook.

G: Uh huh.

HB: You're not going anywherefast. Now look.

G: You're sawing, you're sawing the limb you're sitting on. Yeah.

RB: He could make, oh.

HB: I want to tell you something Ed, listen to me. The day that you ever get to the stage that you gotta leave...

RB: You can have it. I don't think it will ever.
It won't,but if it does (inaudible)

HB: Take a weeks vacation and come work for us.

RB: That's why. I gonna tell you now.

HB: No problem.

RB: Ed.

G: Yeah.

HB: Work here or in Florida.

RB: Be cocky. Be cocky.

G: Yeah.

HB: Like you always were. You were very much
evasive. (Inaudible)

RB: If anybody ask you anything, the answer
is no, no, no.

HB: I don't know what you're talking about.

F: I tell you this and I can assure this.

RB: You deny everything.

HB: Cause we don't know what you're talking about.

F: That these two as far as anything is concerned...

G: Yeah.

F: Will not talk.

HB: We don't know what you're talking about.

F: This I tell you.

HB: We don't know what you're talking about.

F: I'll control that situation. That's why I say I'm not concerned over it. They, they if anything, if anybody...

HB: Shh, wait a minute, let me tell you something.

RB: Harry, wait a minute.

F: If anybody, anybody is going to do anything to you I tell you now...

RB: (Inaudible)

HB: And it's so much simpler (inaudible) you deny it. We don't know what you're talking about.

F: Oh, no, no, no.

G: All right, so what, so what do we do with this this, Kapra, this Kapraki thing. This is what's gonna come with it or what?

F: As far as Kapraki is concerned, Kapraki and Cardona are not enough justification.

G: Yeah.

F: (Inaudible) And he's fishing. He's going all over the lot; and you see if...

RB: Whatever she says, she's a liar.

F: Whatever she says, whatever she says is absolutely not true.

HB: She's a damn liar.

F: Absolutely not true.

HB: She's a completely worthless woman. They call her the scum of the earth. They call her a (inaudible).

F: Number one, may I, may I say, let me put it on this basis. I, I would say that, a matter of, uh...

G: I hope he don't send me the bill for this one.

F: Ha ha.

G: Ha, ha.

RB: What, what?

HB: We'll get the bill.

RB: What, what?

HB: We get the bill.

G: I hope he don't send me the bill for asking.

RB: No, he wouldn't. We get the bill.

F: See, if any subpoenas are served, get an attorney and a good one. Believe me, I approve of him. I would absolutely recommend. There's no reason to depend on your attorney. I would absolutely recommend a refusal to talk. Because of the job, you know where you stand here.

HB: You're still work with us.

F: Right. But, uh, if you do talk you're finished anyway.

HB: You're finished anyway.

F: So you might just as well not.

G: Hmm.

HB: If you talk is a jail term.

F: At, at that point though, if then, and then, and then, then you're in an Internal Revenue (inaudible).

G: Yeah. The other thing.

F: Darn right. I just can't understand it. That's why I'm shocked at you.

HB: He gets you or DICK HENDERSON, Al, may I say this? When you get the subpoena, now I'm speaking confidentially, call Al...

RB: Call Al right away.

F: Oh, well contact me.

HB: Call him right away.

F: Let me know if nothing else. No problem at all.

RB: Yeah, call him, call him.

HB: Directly.

RB: Did he, did he get your number IV 9-(inaudible)

HB: Yeah, he got that all ready. Any problem, day, night or anytime.

G: Yeah.

HB: We'll pick up from there and we'll pick (inaudible).

RB: You know what I think we better do when he calls, it's Mr. Edwards.

G: Hmm?

HB: Mr. Edwards.

RB: Mr. Edwards.

F: May I tell you something?

G: In other words don't use your name.

HB: It doesn't matter.

F: It doesn't make any difference. You must remember this, I represent US Life.

RB: Yes.

F: I represent all the others. I call, I, I call up bankers. It so happens I never, I never really, you know, spoken to an appraiser. But how many times have I been with Cronin and I've been with Bose and I've been with Jancovic. I was with Condon. I was with Martin. I've been with them all, you know, on various problems.

HB: He's in the industry. He's in the industry.

G: Yeah.

F: Innocent enough. There's nothing wrong with it. I'm gonna have (inaudible) attorney, I'm not even, don't forget, I'm not part of Eastern.

RB: No. That's right.

F: I'm not representing as the bank's attorney I have my own practice.

HB: He represents...

G: Yeah.

HB: Five clients like us. Like us.

RB: Hey Ed.

HB: Plus his other clients. I mean (inaudible).

RB: Your, your, you're gonna go see this guy now and then you're gonna call Al.

G: Yeah.

RB: You know even if you call him late tonight (inaudible).

G: What time are you gonna be home?

HB: (Inaudible) All right he'll be home, but before 9:30 - 10 o'clock.

F: Don't worry about it.

RB: Oh, don't worry he, he doesn't go to sleep.

F: No problems.

HB: You go and see him before you go home and then call Al, say after 9.

RB: Yeah.

F: Anytime.

RB: See to Al you can talk (Inaudible).

HB: Yeah.

F: He knows that.

RB: (Inaudible)

HB: Say 9:30.

F: Say it was nice talking to you. Say everything was taken care of. That's all. In other words it was straightened out nicely, period.

G: You mean in other words don't call you, call him.

HB: Call him up.

RB: Call him.

G: Yeah.

HB: I spoke to my friend and uh,

G: All right.

F: That's all.

HB: I'd tell him I straightened the matter and that's it. All right, let's go.

RB: (Inaudible).

G: Okay.

F: (Inaudible).

G: Yeah, Keep going. I sure appreciate your spending the time with me.

F: What's that?

G: I feel better for it.

F: Ed, really I mean, don't aggravate, don't worry.

HB: Ed, if you're worried about future income, you gotta get going with Eastern right away now or one of our other corporations and your salary will be...

G: You got a spot there?

HB: I got a spot there. I always said I had a spot

G: Yeah.

HB: Immediately. Take one week's vacation and start right off. Should I say more than that?

G: No. Shoot no.

HB: You start right off. Take a week's vacation at my expense. That all.

RB: (Inaudible)

G: All right.

HB: Ed, in all the years were we, were we ever cheap on anything?

G: No, no.

RB: All right, you gotta go (inaudible)

G: Yeah. Okay. I got business to take care of.

HB: Okay.

Waiter: Good night. Thank you.

G: Good night. Thank you.

HB: Al, I got the check. I got it, I got it, I got it, come on, I got it.

RB: Harry let Al, let Al, uh, heat up the car a little.

HB: Heat up the car.

F: Okay. I'll heat the car up. Give me, give me the leather one first and I'll heat the car up first, okay. I'll heat it up. That's right. Okay.

G: The heat is so bad you took the valve off.

F: Yeah. It's all taken care of. Ed, it's a pleasure.

G: Okay. God bless.

F: Let me go heat the car up (inaudible).

G: Thank you very much for your... It was sure a treat.

F: Don't worry.

G: Huh?

F: Don't worry.

G: Don't worry?

F: Believe me.

G: Okay. Yeah mail order special. I got a hat in there too, I think. Least wise I had it before.

Unknown Female Voice: It's here.

G: Yeah, it's there. Let me give you a hand with it. Let me sit it here a moment. Mind your your lamp there. I don't want to hurt it none. You got a coat on already?

RB: Who me, I got my coat.

HB: That might be my coat.

G: We got an extra.

HB: No, no that's not our coats.

G: We got an extra coat here.

HB: No, no mine is just, uh,

Unknown Female Voice: Wait a minute. Put that...

HB: Black one.

G: That one is mine.

HB: Mine is this one I think. There's black gloves inside. Yep this is mine.

G: Yeah, but that one ain't ours.

Unknown Female Voice: This one here?

G: No ma'am

HB: No.

Unknown Female Voice: I think there's too many you have there.

HB: Did we?

G: I guess so. Unless, unless Al has gone queer and is wearing ladies' coats. I'll get it. Here you go.

RB: How is JJ doing, all right?

G: He called me, he called me up Saturday night or Sunday night I forget, and he just talked, that's all and he seemed to talk aimlessly. I don't know, uh, his eyes were bothering him.

You know he has one bad eye. He said that's improving a little bit but the other eye is a little worse.

RB: Who was the (inaudible)?

G: He's doing property management work I understand.

RB: O yeah?

G: Yeah.

RB: (Inaudible)

G: Not that I know of.

HB: Right here. We'll wait a minute. All right, go ahead Al.

G: Ah, you may as well go ahead. You ain't gonna get it that much hotter that much quicker.

HB: All right. Ed, Ed, take it easy.

G: All right. God bless, and thank you very much for being here.

RB: Okay.

G: Yeah.

HB: So long.

G: God bless, take care.

HB: Wait a few minutes...

G: Yeah.

HB: Until it warms up.

G: All right.

JUDGMENT OF CONVICTION

United States District Court for Eastern Dist. of New York

United States of America vs.

M'FILMED

DEFENDANT ALFRED FAYER

DOCKET NO. 76 CR - 310

JUDGMENT AND PROBATION/COMMITMENT ORDER

MONTH	DAY	YEAR
8	19	1977

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Jack Korshin (Name of counsel)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
AUG 19 1977 ★
TIME A.M.
P.M.

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY. in counts 1 to 4 incl.

Defendant has been convicted as charged of the offense(s) of violatingT-18, U.S.Code, Sec.1623 in that on Feb. 19 and Feb. 20, 1975, the defendant, while under oath as a witness in a trial before the U.S.District Court for the Eastern District of New York, did knowingly make false material declarations and did endeavor to influence the witness not to testify voluntarily before the grand jury

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Defendant is sentenced to pay a fine of $5,000 on count 4. Imposition of sentence is suspended on counts 1, 2 & 3 and defendant is placed on probation for a period of one month. Execution of sentence is stayed pending appeal.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

Jacob Mishler

Date 8/19/77

EXCERPTS FROM THE TRANSCRIPT OF THE FIRST TRIAL

(72 CRIM. 589; 75 CRIM. 43)

MR. KORSHIN: I am prepared to concede, if the Court please, that on October 29, two persons were called before the Grand Jury, one was Harry Bernstein and the other was Florence Behar; that on December 1, 1971 a witness named Frank Fay was called to testify before the Grand Jury and that on February 3rd, 1972, a witness named William Roy Schiller was called to testify before the Grand Jury.

MR. WOODFIELD: I believe there is one further one. They may have stuck together. That is October 29th. There were three individuals who appeared before the Grand Jury. I believe you stated, Mr. Bernstein and Florence Behar. There is also Rose Bernstein's testimony.

MR. KORSHIN: The one I missed was Patricia Buckley, -- they were stuck together. I will stipulate that a witness named Patricia Buckley, was called to testify before the Grand Jury on February 3rd, 1972.

THE COURT: Why don't we just mark the transcript is in evidence.

MR. KORSHIN: If the Court please, I am not bound by anything that these witnesses did.

THE COURT: Just to show --

MR. KORSHIN: Just to show that they testified and for no other purpose.

THE COURT: That stipulation will suffice.

MR. KORSHIN: Yes.

MR. WOODFIELD: These individuals testified in the Grand Jury and exercised their Fifth Amendment privilege.

THE COURT: Is that stipulated?

MR. KORSHIN: I don't know that it is relevant. I will stipulate it, but it's not relevant in my view.

MR. WOODFIELD: Your Honor, here are six copies of those transcripts.

THE COURT: Mark them for identification only.

THE CLERK: Six transcripts marked for identification as Government's Exhibits 1, 1-A, 1-B, 1-C, 1-D and 1-E.

(So marked)

MR. KORSHIN: I have five. Who is the sixth?

MR. WOODFIELD: Rose Bernstein on October 29, 1971.

MR. KORSHIN: I will stipulate to that.

THE COURT: Do we need the witness for any further purpose?

MR. WOODFIELD: No, your Honor.

THE COURT: Do you want cross-examination?

MR. KORSHIN: No, your Honor.

MR. WOODFIELD: There is one question. I mentioned -- the subject matter of this Grand Jury investigation, that it was investigating fraud in the FHA and the real estate industry within the Eastern District of New York.

MR. KORSHIN: I stipulate to that.

THE COURT: You are excused. Thank you.

(Witness excused)

MR. WOODFIELD: At this time, your Honor, I would offer these Government Exhibits into evidence.

MR. KORSHIN: I object.

THE COURT: Sustained.

Next witness.

MR. WOODFIELD: The government calls Edward Joseph Goodwin.

EDWARD JOSEPH GOODWIN, called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WOODFIELD:

Q By whom are you employed. Mr. Goodwin?

A I am presently employed by Theatrical Service and Supplies, Inc. in Deer Park.

Q And where were you employed prior to your present employment?

A I was an appraiser for the Federal Housing Administration at 175 Fulton Avenue, Hempstead, New York, the Hempstead Insuring Office.

Q What years were you employed with the FHA?

A Between 1964 through April 14, 1972.

Q Could you just briefly explain what the duties are of an appraiser with the FHA?

A My duties as an appraiser were to evaluate the market value of real estate properties which were being offered as collateral for government insured FHA mortgages, to determine what term that mortgage would be -- in other words, for how many years it would run; whether or not it was acceptable to the Federal Housing Administration and what repairs, if any, were required to make it acceptable.

Q Did there come a time when you left the employ of the FHA?

A Yes.

Q When was that?

A I believe it was April 14, 1972.

Q Further, did there come a time when you entered into an agreement with the United States Government?

A Yes.

Q And when was that?

A About the 14th of January of the same year, 1972.

Q What was that agreement, Mr. Goodwin?

A That I would cooperate with the United States Government in the course of this investigation and disclose to them any and all wrongdoings that I had knowledge of, within the FHA and that I had been guilty of, as well as of others; that I would testify to those wrongdoings; that if I lied in the course of such testimony, I would be guilty of perjury and that I would be permitted to plead guilty to a single count of conspiracy and -- in satisfaction for all wrong -- evidence of wrongdoings that I would disclose and that at the time of the sentencing, the sentencing Judge would be made aware of my cooperation and the extent of my cooperation.

Q Did there come a time, Mr. Goodwin, when you did plead guilty?

A Yes.

THE COURT: Excuse me. Is there a memorandum of this agreement?

MR. WOODFIELD: No.

MR. KORSHIN: We don't even know at this point with whom it was made, if the Court please.

THE COURT: I understand. But the practice subsequent to this was to enter into a letter memorandum in order to insure that there was no dispute about what was agreed to. In the protection of the defendant, I made this inquiry.

MR. WOODFIELD: At that time it wasn't an office policy.

Q Did there come a time, Mr. Goodwin, when you did plead guilty?

A Yes.

Q Do you recall when that was?

A Yes. It was December the 12th, 1973, I believe.

Q Did there come a time pursuant to that plea that you were sentenced, Mr. Goodwin?

A Yes.

Q And when was that?

A In September of 1974.

Q Before what judge was that?

A Judge Travia.

Q What was the sentence that was imposed?

A I was given a sentence of $5,000 fine and three years probation.

Q Now, Mr. Goodwin, during your years as an appraiser with the FHA, did you do appraisals from applications of various lending institutions?

A Yes.

Q And by what method were these FHA files distributed to the appraisers?

A Typically --

MR. KORSHIN: If the Court please, I must object on the ground that it isn't relevant.

MR. WOODFIELD: Your Honor, if I may --

MR. KORSHIN: There is nothing in these statements which involve appraisals or the method of appraising.

MR. WOODFIELD: Your HOnor, if I may, I believe a short background into Mr. Goodwin and his involvement both with the FHA and with the Bernsteins is relevant and better aids the Court in understanding the tapes when they are played. It's a summary, a very brief background. I don't plan to go into it at any great length.

MR. KORSHIN: The involvement with the Bernsteins has nothing to do with this defendant unless it's brought home to us, unless we were involved in it.

MR. WOODFIELD: YOur Honor, the government submits that the tapes will most definitely bring this home.

THE COURT: Objection overruled.

BY MR. WOODFIELD:

Q The question, Mr. Goodwin, by what method were FHA files distributed to the appraisers?

A Typically, on a random basis.

Q Can you estimate the approximate number of appraisals that you conducted while you were an FHA appraiser?

A Somewhere about 6,000.

Q Did you have occasion to perform appraisals for the FHA from applications originating from Eastern Service Corporation?

A Yes, sir.

Q And what is Eastern Service Corporation?

A Eastern Corporation at the time that I was employed at the Federal Housing Administration was an approved lender, in other words, they could, without further supervision, insure the mortgages with FHA insurance.

Q Directing your attention -- where is Eastern Corporation located, Mr. Goodwin?

A 175 Fulton Avenue, Hempstead, during that period of time. The same location as the offices of the

Federal Housing Administration in Hempstead.

Q Directing your attention to approximately March 10th of 1967. Did you have occasion to meet Harry and Rose Bernstein on that day?

A Yes, sir.

Q And where did this meeting take place?

MR. KORSHIN: I must object.

THE COURT: Give me the date.

MR. KORSHIN: March 10, 19~~74~~. 67

THE COURT: What is the purpose of this?

MR. WOODFIELD: That's the meeting -- the government submits that's the first meeting when Harry and Rose Bernstein established their bribery relationship with Mr. Goodwin and from that date until and including the dates of this indictment, the bribery relationship existed.

MR. KORSHIN: If your Honor please, that evidence is not relevant against this defendant. There is no claim that he participated in that. In any event, he's not being tried for that.

MR. WOODFIELD: Your Honor, the government submits that his efforts, as will be shown on the tape, was an attempt to cover up and thwart the government's investigation into those briberies, and that is the gist of both counts in the indictment.

THE COURT: Do you have any evidence that this defendant was aware of that relationship between the Bernsteins and Mr. Goodwin?

MR. WOODFIELD: Most definitely. The tapes will clearly indicate that.

MR. KORSHIN: I don't think the tapes indicate that at all.

THE COURT: What part of the tapes? Do you have a transcript?

MR. WOODFIELD: We do.

THE COURT: Show me, if you will, the part of the tape you're going to rely on for this witness.

MR. WOODFIELD: This is a transcript of the conversation that took place on February 9th of 1972, involving Mr. Goodwin, Harry and Rose Bernstein and the defendant Mr. Fayer.

THE COURT: Hasn't all this material been marked?

MR. WOODFIELD: No, your Honor. There are just a couple of transcripts. We have agreed on transcripts except for a few certain areas that he's objecting to. We will hand them out when the tapes are played.

THE COURT: If you are going to refer to something now, you better mark it so the record will be clear

MR. WOODFIELD: It's difficult to take phrases and dissect this transcript. It's very important to listen to the entire transcript, the interplay of the individuals, that is of Mr. Bernstein, Mrs. Bernstein and Mr. Fayer and how they complement one another in their statements, so dissecting statements or taking phrases out is not as effective as indicating Mr. Fayer's guilt. But I will take a few phrases. I would offer this subject to connection at this time.

THE COURT: Who was present at this meeting?

MR. WOODFIELD: Mr. Goodwin, Mr. and Mrs. Bernstein, Harry and Rose Bernstein, and the defendant Mr. Fayer.

THE COURT: Any objection?

MR. KORSHIN: Subject to connection -- subject to correction.

THE COURT: All right. Admitted subject to correction.

THE CLERK: Government's Exhibit 2 in evidence.

(So marked)

MR. WOODFIELD: Your Honor, I can give you the transcript -- for instance, Page 1 at the bottom of the first page where Mr. Fayer states, "Rose has mentioned what you had said to her yesterday."

Your Honor, as the government's evidence will show, on the preceding date, that was the first occasion when Mr. Goodwin told Harry and Rose Bernstein that he had discussed the bribes with his attorney. This indicates -- the government submits, your Honor, that this indicates that Mr. Fayer was aware of this conversation which took place.

MR. KORSHIN: Oh no, that doesn't indicate anything of the sort. It merely indicates that Rose Bernstein had told Mr. Fayer something, but it doesn't indicate what was told to him.

THE COURT: What else are you relying on?

MR. GOULD (For the Government): Your Honor, there are several things on the transcript of the 9th, that Mr. Fayer alludes to that Mr. Goodwin never told him about.

THE COURT: Give me some examples.

MR. GOULD: He keeps referring in the

transcript, on Pages 6, 20, 23, 25, 26, 27, 30 and several other places, he expressed his shock at what Mr. Goodwin's attorney had advised him and Mr. Goodwin, you will see from the transcript, never mentions on the transcript until Page 26, a rather oblique reference as to what it was his attorney had told him.

MR. KORSHIN: There is no question -- I thought you were finished.

MR. GOULD: Mr. Goodwin on the 8th, does mention to the Bernsteins what his attorney told him and the Bernsteins react quite vociferously to this and Mr. Fayer states in the transcript that he asked to see Mr. Goodwin. That's why this meeting of the 9th came about.

MR. KORSHIN: But there is still nothing in this transcript which indicates or establishes what Rose Bernstein told Mr. Fayer, and certainly nothing in this tape which would justify testimony going back -- transactions going back to March 1967.

MR. GOULD: I think it's clear from the transcript that he did know of the Bernsteins' guilt. On Page 68, Mr. Goodwin -- Harry Bernstein says something to the effect of, "If you talk, it blows everything." This is just typical of the types pf phrases that are in this transcript.

THE COURT: I understand that. Why do we have to get into the details of the underlying criminal activities, if any, of the Bernsteins way back to '67? I don't see any point in that.

MR. GOULD: One of the motives, and there are others, but one of the motives of Mr. Fayer, I think, becomes clear from this transcript, to stop Mr. Goodwin from going to the Grand Jury and talking about these --

THE COURT: Isn't there enough in the transcripts to indicate the possibility that the Bernsteins were guilty of something?

MR. WOODFIELD: Most definitely, your Honor.

THE COURT: Then I don't see any reason to go back to details of the '67 conversation. It seems to me that that is cumulative and the objection is sustained at this time subject to the renewal of the offer at a later stage.

MR. GOULD: In Cioffi at Page 16, they talk about how Judge Motley had let in quite a bit of this background information at which this defendant was not present, just to give the jury, or the trier of the facts in this case, background as to how this person came into the picture, what the picture was like at the time and there are several meetings at which the defendant was not present that Judge Motley let in that the Court of Appeals approved of.

THE COURT: I understand I could let it in, but I'm not going to. This is a non-jury trial. The Court is much more familiar than a jury would be with the possibilities of criminal prosecution and the basis for criminal prosecution.

Under the circumstances it seems to me it would not have sufficient probative force to warrant wasting time with it. At this taping. I may subsequently decide differently.

We have a relatively narrow issue here. Let's keep to it if we can. Sustained.

MR. WOODFIELD: Your Honor, if I may inquire, you sustained objection as to the conversation which took place on March 10th, 1967. Does that ruling include any conversations and subsequent -- the extensiveness of the payments from Mr. Bernstein to Mr. Goodwin --

THE COURT: I have just taken care of the objection that was made. If you have any other, we will deal with it when it's made.

BY MR. WOODFIELD:

Q Mr. Goodwin, after your meeting with the Bernsteins on March 10th, 1967, thereafter did you have occasion to meet Harry and Rose Bernstein in their office at Eastern Corporation?

A Yes.

Q On more than one occasion?

A Many occasions.

Q Approximately how often did you meet with Harry and Rose Bernstein in Mr. Bernstein's office?

A About twice a month.

Q For what period of time, Mr. Goodwin?

A Between March the 10th, 1967 and through all of 1971.

Q On those occasions did you have an occasion to receive anything from Harry or Rose Bernstein?

A Yes, sir.

Q What was that?

MR. KORSHIN: I must object, if the Court please. This has nothing to do with this defendant.

THE COURT: I will take a very brief statement to indicate that there was a basis for the

Grand Jury inquiry. It was a serious inquiry, if this is established.

MR. KORSHIN: But what must be established, is that the defendant knew that there was a basis for the Grand Jury inquiry. He knew the inquiry was going on, but now the question is, did he know that there was a basis for it?

THE COURT: I'm going to rely upon -- I take it the transcript and other evidence is available for that.

MR. WOODFIELD: Yes, sir, your Honor.

MR. KORSHIN: Then it would be taken subject to proof that the defendant knew.

THE COURT: That the defendant knew that the Bernsteins had a serious possibility of being found guilty of a crime. And that the probabilities were that they at least made that much known to the defendant. That will have to be established.

MR. WOODFIELD: Thank you.

BY MR WOODFIELD:

Q Mr. Goodwin, approximately how much money did you receive from Harry and Rose Bernstein in this manner?

A Approximately, over the years, $15,000.

Q During 1971, while you were employed at the FHA, were you aware of a federal investigation that was bein conducted in the Hempstead office of the FHA.

A Yes, sir.

Q How did you become aware of this investigation?

A I was told about it by Mr. Cronin, the chief underwriter at Hempstead Insurance Office.

(Continued on next page.)

Q Directing your attention to approximately December 16th of 1971, did you have an occasion to meet with Harry and Rose Bernstein on that date?

A Yes, sir.

THE COURT: Give me the date again, please.

MR. WOODFIELD: Approximately December 16, 1971.

Q Who initiated this meeting, Mr. Goodwin?

A Mr. and Mrs. Bernstein.

Q Were arrangements made to meet?

A Yes, sir.

Q What were those arrangements?

A That I was to meet them on Hilton Avenue, which was around the corner from the Hempstead insurance office of the FHA, it's a street which is opposite Abraham & Straus Department Store.

Q Did you meet Harry and Rose Bernstein on that occasion?

A Yes, sir.

Q Was anyone else present?

A No, sir. Myself, Mr. Bernstein and Rose Shornstein, Mrs. Bernstein.

Q Did you have occasion to have a conversation with Mr. and Mrs. Bernstein on this occasion?

A Yes, sir.

Q Would you please relate that conversation to us?

MR. KORSHIN: I object, if the Court please. That doesn't bind us in any way. We weren't there. It's not admissible against this defendant.

THE COURT: What was the first meeting that this witness had with this defendant?

MR. WOODFIELD: The first and only meeting, your Honor, is the meeting that is transcribed as February 9th, 1972.

THE COURT: Was there any reference in the February 9th meeting to the December 16th meeting?

MR. WOODFIELD: Not to the meeting per se, but to the events that took place at this meeting, and that is at this meeting -- the government submits, your Honor, that at this meeting of December 16th, 1971, Harry and Rose Bernstein told Mr. Goodwin to go -- if he was subpoenaed before the Grand Jury, to take the Fifth Amendment. Also, this was the first occasion when there was conversation concerning payment of attorney's fees for Mr. Goodwin, your Honor, that's -- Mr. Fayer is included in the count in the indictment, I believe -- the it's the indictment

[illegible]

72CR. 589, of aiding and abetting bribery of Mr. Goodwin. One of the things of value offered to Mr. Goodwin were attorneys' fees, and these items are discussed on the tape -- on the meeting of February 9, 1972, and Mr. Fayer was present.

MR. KORSHIN: The tape -- on the tape of the meeting of February 9, 1972, there is talk about attorneys' fees, but there is no reference whatever to a conversation on December 16, 1972, and in fact, the only reference to an earlier conversation, a conversation prior to February 9, 1972, is the statement on Page 1, "Rose has mentioned to me this morning, what you said to her yesterday." But that doesn't prove what was said to him.

MR. GOULD: Your Honor, on several instances here, they don't specifically refer on that meeting of the 19th, "Remember when the Bernsteins told you this," there are obviously some inferences to be drawn and some of these can be drawn by the fact that he knew certain things about Mr. Goodwin that Mr. Goodwin never told him about, including the attorneys' fee offer, including the fact that Mr. Goodwin's attorney had told him several things, and Mr. Goodwin had only told these things to the Bernsteins at previous meetings, so the inference, I think, is very apparent, and of course, the trier of fact can either draw that inference or choose not to draw it but I think it's certainly admissible, and incidentally, Page 12 is, I think, another area where he mentions that Rose has discussed this thing with him.

On Page 62, there is a reference to the attorney, he says, "When I heard about this," Page 62, talking about what Goodwin's attorney told him. It -- he had to have heard of it from the Bernsteins, that's the only person Goodwin told about it.

So that there are inferences to be drawn. Whether or not ultimately the trier of fact wishes to draw them is another matter, but the government submits it's rather apparent.

MR. KORSHIN: You can't draw the inferences that the government attorneys want drawn. They want to go back to a meeting on December 16, 1971. It's perfectly apparent from this transcript that Mr. Fayer had been told certain things and what he was told appears pretty clearly from this transcript. The transcript does not show that he was told any of the details of any of the conversations between this witness and the Bernsteins.

MR. WOODFIELD: Your Honor, I submit that this is completely nitpicking. If you will take this information, or if you take this evidence subject to connection, I'm sure when you hear the conversation -- the government when you hear the conversation of the 9th, it all ties in.

THE COURT: Maybe I better hear the conversations then. What is the witness going to tell us about what happened on February 8th? Maybe the meeting of February 16th is cumulative.

MR. WOODFIELD: It sets the stage, your Honor, of this whole proceeding -- if I may, just referring back for a moment, your Honor, then I will answer your question.

On numerous occasions on this 9th tape, Mr. Fayer states how they have had members of the Eastern -- employees of the Easter Corporation go in the Grand Jury, take the Fifth Amendment, many records, everybody sits tight.

Your Honor, that relates back --

THE COURT: What is the February 8th meeting going to show?

MR. WOODFIELD: The government plans to play that tape, your Honor --

THE COURT: You have a February 8th meeting as well?

MR. WOODFIELD: Not involving Mr. Fayer.

THE COURT: I understand that.

MR. GOULD: A tape, yes.

THE COURT: What's on that tape?

MR. WOODFIELD: That's the occasion when Mr. Goodwin tells Harry and Rose Bernstein that he has discussed his bribery relationship with the Bernsteins with his attorney.

THE COURT: What do the Bernsteins say?

MR. WOODFIELD: "Take the Fifth Amendment. We will get an attorney."

THE COURT: Then it's cumulative of what happened on December 16th. Let's get to the key conversations which I take it are those of February 8th and 9th.

MR. WOODFIELD: That's correct, your Honor.

THE COURT: All right. Sustained.

MR. KORSHIN: I submit --

THE COURT: Sustained.

MR. KORSHIN: The key conversation is only the one --

THE COURT: I sustained your objection.

MR. KORSHIN: But your Honor said something, you said the key conversations were February 8th and 9th.

I submit only February 9th is inadmissible.

THE COURT: I understand that. Your objection to the specific question is sustained.

BY MR. WOODFIELD:

Q Mr. Goodwin, approximately when did you begin to cooperate with the Government?

A About the 14th -- about 10 days after I first met agents of the Federal Bureau of Investigation. The 14th of January, 1972.

Q And thereafter did you have occasion to talk with Harry and Rose Bernstein?

A Yes, sir.

Q And thereafter, after you began to cooperate with the Government, did you have occasion to meet with Harry and Rose Bernstein?

A Yes, sir.

Q And on whatoccasion did you meet with Harry and Rose Bernstein?

A I spoke to them on the telephone on the 31st of January, 1972, and hI met with them on the following day on the 1st of February, 1972. That was the first time that I met with them.

MR. WOODFIELD: Your Honor, if I may, just a moment. I believe there will be similar objections to this February 1st meeting, and I'm just -- I just want to say if there is any -- if this is merely cumulative of the events that took place on the 1st.

BY MR. WOODFIELD:

Q Did there come a time, Mr. Goodwin, when you again met with Harry and Rose Bernstein after the February 1st meeting?

A Yes, sir.

Q On what date was that?

A The next time I met with them was on February the 8th.

Q Where did that meeting take place?

A Again, I met them on the street in a car about a block and a half away from the Federal Housing Administration office at Hempstead.

Q And on that occasion, was that conversation recorded?

A Yes, sir.

MR. WOODFIELD: If there is no objection, we will play the recording of the 8th immediately.

MR. KORSHIN: There certainly is an objection.

THE COURT: You better mark it first. Do you have a transcript?

MR. WOODFIELD: Yes, your Honor.

THE COURT: Mark the transcript.

MR. KORSHIN: For identification, I take it, sir.

THE COURT: For identification for the moment.

THE CLERK: Government's Exhibit 3 for Identification.

(So marked.)

THE COURT: Do you have the tapes for the 8th and 9th?

MR. WOODFIELD: Yes, your Honor.

THE COURT: Mark them for identification.

Mark the tape of the 8th Government's Exhibit 3A.

THE CLERK: Tape marked Government Exhibit 3A for Identification.

(So marked.)

MR. WOODFIELD: The tape on the 9th, your Honor, is on two reels.

THE COURT: Government's 2A and 2B.

THE CLERK: Tapes marked Government Exhibit 2A and 2B for Identification.

(So marked.)

BY MR. WOODFIELD:

Q Mr. Goodwin, I show you these exhibits and ask you if these are tape recordings of the conversations that you had with the Bernsteins on February 8th --

MR. KORSHIN: I will concede that they are.

Q With the Bernsteins and Mr. Fayer --

THE COURT: Conceded.

MR. WOODFIELD: I will play the tape, your Honor.

MR. KORSHIN: I object, if the Court please.

The conversation on the 8th with the Bernsteins without Mr. Fayer present is not admissible against Mr. Fayer for any purpose.

THE COURT: Excuse me --

MR. KORSHIN: There is no proof --

THE COURT: I would rather hear the 9th first then.

MR. GOULD: Your Honor, may I read one statement from the 9th tape which I think is typical of the type of inference we are asking you to draw.

Page 12, in the middle Mr. Fayer says, "If anybody" -- "If anybody says they are -- it's going to hurt them. This is basically my feeling. This is why when they -- Rose mentioned this morning, I said, 'Invite Goodwin to sit down because everybody is in the same boat.'"

Now, that boat, your Honor, of course, involves the bribes. It involves exactly what Mr. Goodwin talked to the --

THE COURT: You are going to let me listen to the tape of the 9th, I take it, are you?

MR. GOULD: Yes, your Honor.

THE COURT: All right. Federal Rule 611 in control of the order of proof, I prefer to hear the tape of the 9th in which the defendant actually participated before I rule on the objection before me with respect to the tape of the 8th.

I'm not ruling adversarily, I just prefer to hear it first since I'm going to hear it anyway.

MR. KORSHIN: I want that to show, that the first portion is inaudible.

(Tape played.)

MR. WOODFIELD: Your Honor, the Government will concede that approximately the first five minutes is inaudible. If we may proceed, we will go right to the portion of the tape that is inaudible.

MR. KORSHIN: Approximately five minutes, that is the concession?

MR. WOODFIELD: Yes.

MR. KORSHIN: Yes.

THE COURT: I have read Government's Exhibit 2. I will want to hear portions of it played back for me. In order to get some idea of the tone of the participants at various portions. Based on my reading of the transcript, however, it's quite clear to me that the conversation of February 8th would be admitted.

On the bottome of Page 1, the defendant indicates that Rose, indicating Rose Bernstein, had referred to that conversation. At the bottom of Page 51, the defendant indicates, "The Bernsteins have told me certain things about the expenses."

Which, I take it, at least possibly could refer to conversation of February 8th, based upon what the attorney for the government had said is in that conversation. In addition, the transcript as a whole, indicates that the defendant felt himself charged with the general defense of the Bernsteins and that he was at least as he put himself forward to Goodwin, generally directing that defense which included as its predicate an assumption that none of the witnesses would speak when called by the government.

There are other pertinent references in the exhibit of February 9th, but I think that surfaces as a basis for admissibility.

MR. WOODFIELD: Your Honor, if I may, the government at this time would renew its question to play the tape of the Agent Triorto.

THE COURT: We'll mark the 8th transcript in evidence.

MR. WOODFIELD: It has been done.

THE COURT: No.

THE CLERK: Government's Exhibit 3 marked into evidence.

THE COURT: 3-A is also so marked in evidence.

I don't think I need to hear that whole tape.

MR. WOODFIELD: Your Honor, if I may, for your own information, the tape of the 8th lasts approximately 50 minutes, the tape of 9th, approximately an hour and a half.

THE COURT: Well, do you want to play the 8th first?

MR. WOODFIELD: I would, your Honor.

THE COURT: Do you think we have to play the whole tape?

MR. KORSHIN: I don't think so.

THE COURT: All right, if you want me to listen to it, I will.

MR. WOODFIELD: Thank you.

THE CLERK: Government's Exhibit 3-A marked in evidence.

(So marked)

MR. WOODFIELD: The portions of the tape the government would request you hear, -- listen to the entire 8th -- as you are probably now aware of the reading, there are portions that just involve ordering meals and that portion certainly could be --

THE COURT: I'll hear whatever counsel wishes me to hear.

MR. WOODFIELD: Thank you, your Honor.

THE COURT: Is this a pair of earphones for me?

(Tapes being played.)

DIRECT EXAMINATION

BY MR. WOODFIELD: (Cont'd.)

Q Mr. Goodwin, when did this meeting take place on February 8th?

A In the afternoon.

THE COURT: I think the record ought to show that the record was extremely clear and that the transcript in every important respect was accurate.

Q Later that evening on February 8th, did you have an occasion to again speak with Harry and Rose Bernstein?

A Yes.

Q What was that conversation?

A I told them that I wasn't able to get in touch with the engineer, which was a code word for lawyer, regarding the water problem, that I would try and get him later in the evening.

Q Approximately what time was this conversation?

A About 8:00 o'clock or so, I believe.

Q What kind of communication was that?

A Telephone.

Q Did you have an occasion to again speak with him that evening on February 8th?

A Yes, they called back after 10:00 o'clock.

Q And what was that conversation?

A And they said, don't try to get in touch with the lawyer, that they would want to see me in the morning. I said there is no way I could see them in the morning, it was impossible. They would get in touch with me the next day and make arrangements to get together.

Q Now, directing your attention to that next day, February 9th, 1972, did you have occasion to meet Harry and Rose on that day?

A Yes, close after business.

Q Where was that, that meeting?

A Again, it was around the corner from the FHA on Hilton Avenue or is it the one that goes down near

Abraham & Straus.

Q Who was present at that meeting?

A In the car was myself, Mr. Bernstein, his wife, Rose Bernstein, Mr. Fayer and the chauffeur.

Q Did you know Mr. Fayer at that time?

A I knew him. Didn't know he was going to be there, I didn't expect to see him.

Q From where did you know Mr. Fayer?

A He had been the attorney at several closings, real estate broker representing Eastern Service Corporation. Strictly business relationship.

Q Have you ever discussed your bribe taking with the Bernsteins with Mr. Fayer?

A With Mr. Fayer, no.

Q Had you spoken to Mr. Fayer recently prior to this meeting?

A I hadn't spoken to him to the best of my knowledge, in a long time-- months at least.

Q Now, what if anything, did you do after you arrived at the Bernstein's car on February 9th?

A Well, first I was surprised to see Mr. Fayer there, they at that point said they wanted to eat, they wanted to go out for dinner and they suggested going to the restaurant, the Maison Pepe. Asked me if I knew where it was , I said no. They started to describe the location, I ended up following them. Went to the restaurant.

MR. WOODFIELD: Your Honor, at this point I would request playing the 9th tape.

THE COURT: Any objection?

MR. KORSHIN: No. Is it necessary to play it all?

THE COURT: I think we can start in the middle of Page 18. Or any other place you care to begin.

MR. WOODFIELD: Your Honor, there is -- by starting at 18, you left out much of the order of food, however right in the beginning, I believe.

THE COURT: All right. Why don't you direct your technician to play it as you would like it.

The defendant may request any portions that you have of interest played -- to be played.

MR. WOODFIELD: Thank you, your Honor.

THE COURT: I have read the complete transcript. Of Court's Exhibit 2. Government's Exhibit 2.

Where are you going to start? What page?

MR. WOODFIELD: Your Honor, we will start from the beginning.

THE COURT: All right.

(Playing of tape.)

MR. WOODFIELD: At this point, your Honor, we'll skip over to the middle of Page 10. Right now it's in the middle of Page 10. At this point, your Honor, we're going to skip over to the middle of -- Right now it's the top of Page 18.

THE COURT: Excuse me, play that back again, that little piece on the middle of Page 27. Where defendant says, "This is what I --"

MR. KORSHIN: The word is, deduction.

THE COURT: It's not inaudible. The word, deduction crowds out the word inaudible.

Continue. Play that back again beginning with the defendant saying, "I."

The way I read it is the defendant said, "Yes and Mr. Goodwin said, no." That's the way it will read, do you agree?

MR. KORSHIN: I agree.

THE COURT: I'll change the original straining out the words, "inaudible."

(Playing tape)

THE COURT: Repeat that portion "But they get nervous of the defendant." Stop it for a moment. I think the transcript is right. He did say "smagel." It wasn't inaudible. All right, I will correct it.

Let's take a break for a few minutes, very tedious to listen to this intensely. Take a few minutes.

(Recess)

(3:10, back from recess)

(Listening to tapes again)

MR. WOODFIELD: There's a long pause there where it's marked inaudible, but at this point we can skip ahead.

(Continuing on Page 39)

THE COURT: Play that over again, beginning with "State Department automatically held."

Try that again. I didn't hear "There wouldn't be any evidence." I heard something about evidence. "The State Department , if everyone sits tight --" (Slight inaudibility) -- "The evidence."

All right, continue.

MR. KORSHIN: May I just have it how it reads. "State Department, if everyone sits tight."

THE COURT: Excuse me, stop the "nod", is "not"in there.

MR. KORSHIN: I have the sense of it.

THE COURT: Read properly, "I am not," I am going to strike that word, not, which I bracketed in on the fourth line on Page 52.

Excuse me, stop the recording. Page 53, five lines up reads, "That they made an accusation," and that's proper, I think.

MR. KORSHIN: There is a word "naked" in there, sir.

THE COURT: All right. Play it over again, I didn't catch the 'naked." I thought it said "make a."

MR. KORSHIN: That's "a naked accusation."

THE COURT: If you hear it that way, we'll take it. I heard "Make an accusation," but it doesn't matter, the sense is the same.

Proceed.

Play this back again beginning with "Doesn't tell her to run out of town," beginning on Page 66.

(Listening to tapes)

MR. KORSHIN: Can we stop it, Judge Weinstein, for a minute. Can we go back to the part that he said, "Goddam it, on the new projects coming in there is a question in my mind and Mr. Fayer's mind as to whether this transcript is accurate along there."

The, "I thought he knew that wasn't said by Mr. Fayer, I think that was said by Harry Bernstein."

THE COURT: All right, do that.

(Listening to tapes.)

MR. FORSHIN: Maybe, Goodwin.

THE COURT: All right. "I thought he knew as--" Goodwin.

(Listening to tapes.)

THE COURT: There's a new tape at the top of page 90.

MR. WOODFIELD: Yes, your Honor.

THE COURT: Who is this lady?

MR. FAYER: My wife. Any objection, Judge?

THE COURT: I just wanted to know who she is. Take a breather while they get this thing set up.

(A short recess was taken.)

(After recess.)

THE COURT: All right, please continue.

(Listening to tapes.)

MR. WOODFIELD: Your Honor, at this point the Government will end the tape here.

THE COURT: Anything more you wish?

MR. FORSHIN: No.

THE COURT: I listened to the middle of page ninety-six.

Q Mr. Goodwin, I show you what is marked Government

Exhibit number 4 for identification and ask you if you can identify this?

A Yes.

Q And what is that?

A That's the business card that Mr. Fayer gave me at the time of this dinner meeting when he wrote his telephone numbers on it.

MR. WOODFIELD: May I have it, please.

Your Honor, I'd offer this into evidence.

THE COURT: Any objection?

MR. KORSHIN: No objection.

THE COURT: Admitted.

THE CLERK: Government Exhibit 4 marked in evidence.

BY MR. WOODFIELD:

Q Mr. Goodwin, did there come a time after February 9, that you had any further contact with Harry or Rose Bernstein?

A Yes.

Q When was that?

A Two days later on the 12th.

Q What was that communication?

A Mr. Bernstein called.

MR. KORSHIN: I must object to this conversation unless it was in the presence of Mr. Fayer. Unless Mr. Fayer was involved in it in some way.

MR. WOODFIELD: Your Honor, if you'll listen to the conversation you'll see he is involved. The thrust of this conversation was that Mr. Bernstein called Mr. Goodwin and told him to call Mr. Fayer and although we haven't brought it to your attention yet there is a short, approximately a minute tape phone call of Mr. Goodwin to Mr. Fayer which we --

THE COURT: Which call? This call?

MR. WOODFIELD: After

MR. KORSHIN: That's all the conversation is. I don't believe that they simply told him to call Mr. Fayer. I don't object if that --

THE COURT: Continue. The objection has been withdrawn.

BY MR. WOODFIELD:

Q Mr. Goodwin, what was the conversation you had with Mr. Bernstein on that evening?

A Told me to call Mr.Fayer right away.

Q And what did youdo?

A This was during the day, wasn't in the evening.

Q What did you do later on that day?

A I called Mr. Fayer.

MR. WOODFIELD: May I have these marked, please

THE COURT: Are there any objections to marking this tape in evidence?

MR. KORSHIN: No, sir.

THE COURT: Mark them in evidence and mark the transcript Government 5 and the tape Government 5A.

THE CLERK: Transcript is marked Government Exhibit 5 in evidence and the tape is Government Exhibit 6.

THE COURT: 5A.

THE CLERK: 5A.

THE COURT: Tape will be 5A.

BY MR. WOODFIELD:

Q Mr. Goodwin, that subsequent phone call to Mr. Fayer, was that phone call recorded?

A Yes, sir.

MR. WOODFIELD: May we play that at this time, your Honor.

THE COURT: You may. Go ahead.

(Listening to tape.)

THE WITNESS: I think that's on the wrong side.

MR. KORSHIN: We don't question the accuracy of this transcript.

THE COURT: I'd like to hear the in~~cl~~toinations. Don't fiddle with it. I'll assume Government Exhibit 5 is correct. If they can correct their equipment before the session is over tonight, I'll hear it.

Otherwise, we'll proceed without it.

BY MR. WOODFIELD:

Q Mr. Goodwin, I again show you Government 4 in evidence and ask you to look at the reverse side ofthat card.

A Yes.

Q Could you please tell us what's written on that card?

A Name, Jack Korshin. It's in my handwriting, Mineola.

Q When did you place that on the card?

A At the time that I had this conversation over the phone with Mr.Fayer.

MR. WOODFIELD: Thank you, no further questions, your Honor.

MR. KORSHIN: How late does your Honor plan to sit?

THE COURT: All right. The technicians have straightened out the tape. Let's hear 5A.

MR. WOODFIELD: Nothing further with this witness, your Honor.

THE COURT: Well, did you ever employ Mr. Korshin?

THE WITNESS: No, sir.

MR. WOODFIELD: Excuse me, your Honor.

CONTINUED EXAMINATION

BY MR. WOODFIELD:

Q Mr. Goodwin, did there come a time after this February 12, 1972, meeting that you testified in the Grand Jury?

A Excuse me, sir?

Q Mr.Goodwin, did there come a time after the phone conversation as you just heard, dated February 12, 1972, that you testified in the Grand Jury?

A Oh, yes.

Q Do you recall approximately when that was?

A A few days later?

Q Did you have an occasion to testify on more than one occasion in the Grand Jury?

A Yes, sir, numerous occasions.

MR. WOODFIELD: Thank you.

I have no further questions.

MR. KORSHIN: If the Court please, I have not been furnished with the Grand Jury minutes with

THE COURT: Good morning, everybody.

MR. WOODFIELD: Your Honor, if I may, one matter first. I believe either you or your clerk, I believe your clerk contacted Mr. De Petris about possibly obtaining the charge of Judge Mod from the Southern District. We communicated with the assistant that handled that case there and their transcript is in their closed files in storage in Bayonne, New Jersey.

It takes approximately 10 days to get it and the only thing is you might consider having your clerk contact the judge's clerk. They may have a copy of it. We are not able to obtain it.

THE COURT: It is not necessary.

MR. WOODFIELD: Thank you.

MR. KORSHIN: I'll call the defendant, if the Court pleases.

ALFRED FAYER, being duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. KORSHIN:

Q Mr. Fayer, you're a member of the bar of the State of New York, are you not?

A I am.

Q When were you at admitted to the bar?

A June 1942.

Q And have you practiced your profession continuously since that date?

A No, since 1946.

Q Where were you between 1942 and 1946?

A In the Navy.

Q Mr. Fayer, Eastern Service Corporation is your client or was your client?

A Yes.

Q And Rose and Harry Bernstein were clients of yours?

A Yes.

Q Now, you have a copy of the transcript of the conversation between Mr. Goodwin, the Bernsteins and yourself on February 9, 1972, do you not?

A I do.

Q At page 1 of that transcript appears this statement made by you.

THE COURT: Page 10.

MR. KORSHIN: Page 1.

Q "Rose has mentioned to me this morning, uh, what you had said to her yesterday."

Rose Bernstein is talking to you on the morning of February 9, 1972, with reference to a conversation she had had with Mr. Goodwin, the previous day?

A She did.

Q What did she tell you, Mr. Fayer?

A She told me that she had met with Mr. Goodwin. That Goodwin was an FHA appraiser and he had been a long time friend of theirs. That he had been interviewed by two FBI men and that he had refused to say anything to the FBI men. They had advised him that he was a possible defendant in the FHA investigation that was going on.

She said that Mr. Goodwin told her he had consulted with an attorney who was a friend of his and that attorney and he had discussed possibly cooperating with the United States Government.

Q By "he" in that sentence you mean Goodwin?

A Goodwin.

Q Yes?

A Discussed cooperating with the Government that Goodwin was not sure what he wanted to do. Goodwin wanted some advice and would I be willing to sit down and meet with him. I said, well, I can recommend an attorney. Rose Bernstein said that Goodwin did not have too much money and that at that point Goodwin didn't feel that he really needed an attorney. He just wanted some advice. I said, well, you may need an attorney and she said, that if it came to that point he was an old friend of theirs they would m arrangements with him to get whatever the attorney's fee might be because they had done the same thing for him with his, I think it was his step-son in Florida. They had worked something out for paying for an attorney for him.

Q Was this in substance the entire conversation at that time, Mr. Fayer, to the best of your present recollection?

A I said, I told them come up and see me at the office. She said, no, he didn't want to speak to me at the office because it was in the same building as the FHA and he didn't want to be seen around.

Q Well, were you subsequently informed that an appointment had been made?

A Yes.

Q Was it the same day?

A Appointment was made the same day. They wanted to know if I was free for dinner.

Q Who wanted to know?

A Rose Bernstein wanted to know if I was free for dinner at that time Goodwin would meet with me.

Q Now, had you ever met Mr. Goodwin before that date?

A Not to my recollection.

Q Mr. Fayer, when you went to this meeting, this dinner meeting, did you regard yourself as having gone in the capacity as a lawyer?

A I did.

Q Did you regard yourself as being there for the purposes of giving legal advice to Goodwin?

A That was my purpose there.

Q Well, Mr. Fayer, there is no question is there but that you were also concerned with the Bernsteins and with Eastern Service Corporation?

A No question about it.

Q Mr. Fayer, what was, at the time you went to this meeting, did you believe the Bernsteins and Eastern Service were guilty of anything?

A I did not.

Q Did you believe Mr. Goodwin was guilty of something?

A I thought so.

Q On what did you base that belief?

A Well, the information that was given to me that Mr. Goodwin was considering cooperating. If the man was considering cooperating, obviously he had been doing something.

Q Was it your opinion and belief at that time that he had been doing something with the Bernsteins?

A No. It was not. He was supposedly a friend of theirs.

Q Mr. Fayer, please turn to page 12 of the transcript of that taped dinner meeting. You see towards the middle of the page there you said, "This is why when they, Rose mentioned this this morning, I said, invite Goodwin to sit down, because everybody's in the same boat."

What invitation did you extend?

A Well, I wasn't going to be charging a fee for it, so as a matter of having, sit down, I'll discuss the matter with him. I certainly was not going to represent him because there would have been a conflict and it was a matter of having him sit down with me.

Q Well, were you soliciting Goodwin to talk to you?

A No, sir.

Q Looking at page 21 of this transcript you see there towards the middle of the page, you made this statement, "Not possible, you're in a different stage, you're in a stage now where you refuse to testify."

What were the "stages" to which you were referring in that statement of yourself?

A Well, the first question of it, "not possible, you're in a different stage," I had been told that Goodwin had refused to speak to the FBI agent. That as a matter of fact he had been advised, I said before he was a potential defendant and he was in that stage at that time. But he was, had been, interviewed by the FBI agent and refused to say anything.

Q What about your "you're in a stage now where you refuse to testify"?

A Well, if subsequently he comes into or he is subpoened to appear before the grand jury, then if he refuses to testify, then it comes to,iit comes to that stage. That's a different stage.

Q Well, Mr. Fayer, was it your intention to advise him if he was called before the grand jury not to testify before the grand jury?

A No, sir. All through this I don't know how many times I said in here, if he's called get a good lawyer. Get a lawyer.

Q Were you, was it your purpose only to advise him not to talk to the FBI representatives until he was subpoened and got a lawyer?

A Until that time.

Q Mr. Fayer, please, tell me this. If you believe that the Bernsteins were not guilty of anything what was your concern about Goodwin talking? What was your concern for the Bernsteins?

Q My concern was a two-fold concern: In the first place, I was there to advise Goodwin and I certainly felt if he had merely been interviewed by the FBI, he shouldn't make any statements. As far as the Bernsteins are concerned, I've known and read of far too many situations where someone is innocent, is dragged in because someone makes a deal or says something. Then, he starts to drag everybody in and my feeling was that who knows who he might drag in whether they're guilty or not.

Q Turn please to page 25 of the transcript.

A Yes.

Q You see at the top of that page you said, "We have counsel, counsel for, we have counsel for not kidding ourselves, for Schiller, Fuy, for Florence Behar. All of them. Everyone of them."

Who were those people?

A Either employees or former employees of Eastern.

Q And was Eastern defraying their legal expenses?

A Yes.

Q Do you know why?

A Well, they were employees. This was part of or they were involved in a situation where they, the problem arose out of their employment or through their employment.

Even the former employees were in that same position.

Q Please, turn to page 40 at the bottom of page 40, you said, "Look at this as a business man, and the law is a business."

What did you mean by that statement, Mr. Fayer? The law is a profession, isn't it?

A The law is a learned profession but you have to earn a living out of it and you have to be paid a fee and in that respect, the law is a business. You have to be paid for your services.

Q What was your purpose in making that statement, Mr. Fayer?

A The, it had, I had been originally told and it had developed in here that Goodwin had consulted with his friend, an attorney. It was a very fast, quick consultation without a fee. My feeling is that you're always better even if you use a friend to hire him and pay a fee and he'll do the job.

Q And was that what you were attempting to convey to Mr. Goodwin?

A Yes. The man has to be paid for his work.

Q Mr. Fayer, turn to page 42 of the transcript.

A Yes.

Q You said toward the middle of the page, "I'll give you the best professional advice I can. Why, because I can give it because I am being paid."

Who was paying you, Mr. Fayer? What did that —

A I wasn't, this is, I wasn't being paid here. This is a, it's an illustration that when I'm being paid, I work for a client. I will do a job. If you're doing something on a friendly basis, of course, you're going to do the best you can for your friend. There is no question about it. There's also the question of how much time you can afford to spend on it and this is why I said right after that, when you start to do it for a friend, I didn't realize this is the problem.

Q Mr. Fayer, did Eastern Service Corporation or the Bernsteins pay you in any way with your meeting with Mr. Goodwin?

A They did not.

Q Did you receive any compensation from anyone?

A For this meeting?

Q For that meeting.

A No.

Q Please turn to page 43. You see at the top of the page, you said, "I, the reason I was shocked, really shocked, I talked to the United States Attorney and I —" and the rest was inaudible.

What were you "shocked" about, Mr. Fayer?

A I was "shocked" in general. An attorney could sit down with a man for a couple of minutes and say, well, we'll see about cooperating. My feeling was that if the attorney is representing a client he should sit down with the United States Attorney and see what kind of a deal he can work out. Work out the best possible deal before he expects his man to speak.

(Continued next page.)

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Q Well, the evidence has shown that at the time of this meeting, Mr. Goodwin had already worked out an arrangement, or an agreement, with the United States Attorney. Were you aware of it?

A I was not aware of that. I believe Goodwin, in the tapes, when he was asked the question, said that he denied having, or never said he had not worked anything else. All he had done, spoken to them, and he had said nothing.

Q Now, turn to page 47, please.

See in the middle of the page there, you said in the middle of the paragraph, "Now, I know this, there are several mortgage companies involved you were asked about."

How did you know that?

A This is when I was told by Rose Bernstein that. This is why I believe Goodwin, as I said originally, I had the feeling that because Goodwin was cooperating, he had something and he had done something. Whoever mortgage companies might have been involved.

Q Not Eastern Service?

A Not Eastern Service.

Q Look at page 51, please.

Do you see at the bottom of page 51, you made a statement saying that, "The Bernstein's have told me certain things about the expenses."

What had the Bernstein's told you, and when?

A The morning of my -- The morning of this meeting is when Rose Bernstein had said that if Goodwin needed an attorney, and the fact is, he couldn't afford it, they would certainly go along and help him out. I think, as I said before, he had, they had done this with his stepson, also, some years before.

Q What were you informed was the relationship between the Bernstein's and Mr. Goodwin?

A I was informed they had been friends for a number of years. They had known each other and they were friends.

Q Look, please, at the bottom of page 57. You see you made the statement there, "It's a hard thing to do, Ed. It's difficult, I said, to you, and I tell you now, I give you my word, as I said to them, something or things may come out, things may appear in some matter, but I tell you now, that you are not going to be hurt, really hurt, by this. Hurt in the sense of being convicted, or anything of that sort."

Were you telling Mr. Goodwin he was not going to be hurt, and not going to be convicted?

A No. This is, if you listen to the tapes, this is part of the preceding paragraph. This is part of the conversation I had with the Bernstein's. I told him of the conversation. I had gone over their house. Mrs. Bernstein had been very upset. I tried to calm her down because this was an investigation that was going on. I told them that my feeling was that I didn't think they would be convicted. They said they had never paid a bribe to anyone.

Q When you say here, "You're not going to be hurt, hurt in the sense of being convicted of anything." You were relating what? You had told the Bernsteins?

A Yes.

Q Now, look at page 58. You see, you made a statement there, "I didn't even bill you for that advice."

A That's right.

Q To whom did you address that statement?

A The Bernsteins.

Q What advice were you referring to?

A This is all part of that. This whole conversation on page 58, where I was relating what I had told the Bernsteins, and I never billed them for that advice or visit.

Q Mr. Fayer, did you ever charge the Bernsteins for anything that you did in connnection with this problem?

A With Goodwin?

Q The whole problem of theirs. The FHA problem, the investigation, the indictment, the trial, and so on. Did you ever charge them?

A Yes. I charged Eastern Service Corporation.

Q Yes?

A Yes, sir.

Q How much in total, do you remember?

A I would say between 5,000 and maybe $7500. But this was, bear in mind, there were a number of attorneys involved. Judge Riskin, Brodsky, Boitel, when they needed information, in connection with that, I had met with the various attorneys on a number of occasions, and this was --

Q This is what you charged?

A This is what I charged them. This was, oh, this was long after this.

Q At the time of this conversation with Mr. Goodwin on February 9, 1972, had you been paid anything by Eastern Service?

A I had not.

Q In connection with this matter?

A No.

Q Had you submitted any bill?

A No.

Q Did you at that time expect to submit any bill for anything that you had done up to that point?

A Yes. For the time I had spent there.

Q Including Goodwin?

A Not including Goodwin, because I told them I wasn't going to charge for this.

Q Turn, please, to page 62. You see the statement there that you made, one-third of the way down on the page, "See, this is why when I heard this thing, I was so shocked, because last Thursday --" You were cut off. What were you shocked about?

A Well, I was shocked about the attorney. This quickly advising somebody to cooperate, without even trying to work out a deal or something.

Q That was the same thing that you referred to before earlier?

A Yes.

Q Please turn to page 91. About two-thirds of the way down you made this statement, "See, if any subpoenaes are served, get an attorney and a good one. Believe me, I approve of him, I would absolutely recommend."

Of whom are you approving, whom recommends?

A I said I would approve of one, I would absolutely recommend getting a good attorney.

Q Were you approving of any particular person?

A No particular person.

Q Were you recommending any particular person at that point?

A Not at that time.

Q You subsequently did recommend?

A Yes.

Q You recommended me?

A Yes.

Q Now, in that same paragraph, you said, "Because of the job, you know where you stand here."

What was the "job" to which you referred?

A It was my misapprehension of the law that he could lose his job. He was working for the FHA.

Q Lose his job, what?

A As an appraiser.

Q Now, why?

A Well, it was my understanding that if a man is investigated, if he refuses to answer questions in connection with his job with the Government, he would have lost it.

Q Were you there referring to any job or position that the Bernsteins were offering?

A No.

Q And did you know of any offer of a position by the Bernsteins to Mr. Goodwin until you heard the offer made that evening?

A Not prior, but at that time I did, I heard the offer.

Q You heard the offer made?

A Yes.

Q Was that the first time?

A First time I heard it.

Q Had you ever discussed that with the Bernsteins, making that offer to Mr. Goodwin?

A Never, never.

Q Had you ever suggested to the Bernsteins that they should pay, get a lawyer for Mr. Goodwin, and pay him.

A Never.

Q Was that a suggestion that came from them, they had previously made to Goodwin?

A Yes. They had said that they would arrange with Goodwin to pay for an attorney. And my understanding was they were going to foot the bill one way or the other, and help him out.

MR. KORSHIN: I have no further questions.

I have one other question.

Q Mr. Fayer, was it your purpose in any way to violate any law?

A It was not.

MR. WOODFIELD: Objection, your Honor.

THE COURT: He hadn't finished the question. Don't answer the question.

MR. KORSHIN: I had finished the question. I asked him whether it was his purpose in any way to violate the law.

THE COURT: All right.

Now, don't answer until the objection is made.

MR. WOODFIELD: First of all, your Honor, he's, it's asking for a conclusion. I don't see the relevance. It's just a self-serving question.

I withdraw the objection.

A It was not my purpose to violate any law.

Q I ask you again, in the speaking to Mr. Goodwin, did you regard yourself as being in the position of an attorney advising someone who had come to you for legal advice?

A I did so after.

Q Did Mr. Goodwin at any time tell you or intimate in any way that he had not expected to see you at that meeting?

A Never made any such intimation.

Q Did he tell you or indicate to you in any way that he was not seeking legal advice?

A No, sir.

Q He didn't tell you that he was seeking it?

A No.

MR. KORSHIN: I have no further questions.

MR. WOODFIELD: I have some questions, your Honor.

THE COURT: You may proceed.

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(continued on next page.)

Q Mr.Fayer, is it not a fact at the time of this meeting on February 9, 1972, you were a member of the board of directors of EasternService Corporation?

A I was.

Q Were you also their closing attorney; is that correct?

A I was.

Q You handled, or members of your law practice, handled all the closings for Eastern ServiceCorporation; is that right?

A I think we handled all of them. There might have been one I didn't know about.

Q Mr. Fayer, were you also retaining counsel for the corporation of Eastern Service Corporation?

A On a retainer basis, no, sir.

Q Yes?

A No, sir.

Q Did you do legal work for Eastern Service Corporation?

A Yes.

Q What did that entail besides the closings?

A Corporate minutes, for example; there were resolutions that might have required to be drawn, Eastern was opening or had opened an office, I should say, in Florida.

I went down there and I worked with the local counsel in Florida. Iworked with the title company and the company in Florida to set up a system.

Q What was your purpose for going to Atlanta?

A Pardon me?

Q What was your purpose for going to Atlanta for Eastern?

A I had not gone to Atlanta. We had -- Eastern opened an office an office in Coral, opened an office in Orlando at the time of this. The next office that they contemplated opening would have been in Atlanta. We had planned to go to Atlanta.

Q Mr. Fayer, is it your testimony that you were present at this meeting on February 9? Your capacity at that meeting was that of attorney; is that correct?

A Absolutely.

Q And who do you say you were an attorney for at that meeting?

A I was the attorney, I was advising Goodwin.

Q And so you considered yourself Goodwin's attorney for the purpose of that meeting?

A I did; yes, sir.

Q Is it your testimony, Mr. Fayer, that you had no knowledge of the criminal involvement of Rose and Harry

Bernstein at the time of this meeting?

A I had no knowledge at this time and I still have no knowledge of it. I know they have been convicted and I'm not questioning that. But the Bernsteins have continually denied they have ever paid a bribe and denied it to me and every attorney they've had.

Q Mr. Payer, I refer you to page 12 of the transcript. I'll read the portion of the statement you made then and I'd like to ask you some questions on it. Page12, approximately the middle of thepage:

> "This is basically my feeling. This is why when they, Rose mentioned this this morning, I said, 'Invite Goodwin to sit down because everybody is in the same boat.'"

Now, Mr. Payer, what did you mean when you said "same boat"?

A There was an ongoing investigation at which any number of mortgage companies including Eastern Service had been called. They were all in the same position of being targets of an investigation. Every one of them and they were all in the same boat.

Q How did you know the investigation was --

A I had the first, I don't know whether the first time -- but I had several conversations with Mr. Accetta, an assistant United States attorney in this matter.

Q At what time was this?

A What time?

Q Prior to the meeting on February 9?

A Oh, yes.

Q What was your capacity? Who were you representing when you had those meetings?

A Eastern Service Corporation.

Q Representing the corporation?

A That's right. That's before we obtained other counsel to handle the criminal matters.

Q Mr. Fayer, again referring to the transcript, page 49. I'm going to read a portion of the transcript again, Mr. Fayer, and ask you some questions on it, beginning about two thirds of the way down, beginning with your statement, "I'll tell you this, as far as the Bernsteins are concerned, you are creating a lot of trouble but --

"Rose Bernstein: We're going to deny it.

"Mr. Fayer: They'll deny it (inaudible).

"I'll tell you right now, they'll deny it."

What is it you're referring to in this statement, Mr. Fayer?

A They'll deny statements that Goodwin might make. That he had been paid by the Bernsteins. They told me they never paid anything.

Q So you are telling us now that you are aware of the allegations that Mr. Goodwin had received bribes from the Bernsteins; is that correct?

A No; he might have made them; as I said before, when a witness or a person is called and makes a deal with the United States Government, there is no telling what he is. I shouldn't say United States, but any governmental agency. There is no telling what he might say to buy his peace and who he may involve.

Q Now, knowing there was a possible conflict between you representing the Bernstein and you representing Mr. Goodwin, you went to this meeting and gave legal advice to Mr. Goodwin; is that correct?

A I did not see any conflict at that time. This is a situation where the Bernsteins and Eastern had already engaged other counsel in the matter. I had said I would not represent him but I would give him advice, and I did as I was saying throughout the transcript that if he were called he should get an attorney. I would not represent him.

Q Again, on page 49 when you state, "They'll deny it," what specifically are you referring to that the Bernsteins will deny, Mr. Fayer?

A Well, what I just said, they will deny any allegations that might be made by Goodwin as to being bribed by the Bernsteins. They have told me they have never paid a bribe.

Q So again I ask you, were you aware that Mr. Goodwin was making allegations he had received bribes from Harry and Rose Bernstein?

A I was not.

Q Mr. Fayer, at the bottom of page 43.

A Yes, sir.

Q Your statement: "Yeah. Excellent. You are the -- uh -- the small fry here. You know what I mean? Really."

What do you mean by "the small fry here"?

A The investigation that was going had as its target a number of very large mortgage companies in the area. Goodwin, as far as I was concerned, was a small fry. He is the one the FBI had said was a potential defendant or prospective defendant and he was, compared to the mortgage companies, he was small fry.

Q Did you consider Harry and Rose Bernstein large fry?

A Oh, yes. I consider Eastern Service Corporation large fry.

Q If they weren't guilty they wouldn't be fry at all?

A Pardon me?

Q If they had no guilt, if they were innocent, they couldn't have been fry?

A Small fry could be a small fish. Small as opposed to large.

Q Mr. Fayer, I refer you to page 36 of the transcript, approximately two-thirds of the way down, your statement: "Ed, from what I understand (inaudible) they haven't been able to find anything, so that --"

What did you mean in that statement, Mr. Fayer, specifically, what did you mean when you said "they haven't been able to find anything"?

A I had had a conversation with the Assistant United States Attorney Accetta. Accetta had made a statement that there were mortgages being placed on nonexistent houses and I told him this was impossible. I repeated in here Survi[illegible]s Title Company, buyers, sellers and there are just too many people to be able to put a mortgage on a nonexisting house. I had challenged him to produce one nonexistent house and this goes back -- I don't -- at this time I would say three, four, five months prior thereto. They haven't been able to find one yet.

Q How does that knowledge apply to Goodwin at all,

Mr. Fayer?

A I was just telling him the story. If you read the page 34 or 5 right on, this is the entire incident that I am telling you about.

Q Mr. Fayer, I refer to page 45 of the transcript, approximately two-thirds of the way down, and I'll read the portion of it, and then ask you questions on it. Beginning with:

"Mr. Fayer: We assume that everybody sits tight --

"Rose Bernstein: Nobody says anything.

"Mr. Fayer: Then he doesn't have a case. Doesn't have --

"Harry Bernstein: He hasn't any.

"Mr. Goodwin: No?

"Mr. Fayer: On the other hand --

"Rose Bernstein: If somebody's going to talk --

"Mr. Fayer: Somebody, this is why I am here tonight. If somebody opens up, then he's got the beginnings of a case."

Again, Mr. Fayer, what was your purpose for being there that evening?

A To advise Goodwin.

Q What did you mean when you said this statement, "Somebody, this is why I am here tonight. If somebody opens up, then he's got the beginnings of a case"?

A I was told that Goodwin had spoken to this friend of his and he was considering cooperating with the Government. I told him in no uncertain terms that if he were to speak, the Government would have the beginnings of a case. No question about that.

Q So you referred to "case" here as limited to a case Mr. Goodwin --

A No; could be against Goodwin, could be against anyone that speaks. Would be against anybody who implicates themselves or implicates others.

Q Could it have been Harry and Rose Bernstein, Mr. Fayer?

A Could have been, yes, sir.

Q Mr. Fayer, I refer you to page 25 of the transcript, your statement near the top of the page: "We have counsel, counsel for -- uh -- (inaudible) -- not kidding ourselves, for Schiller, for Fey, for Florence Behar. All of them. Every one of them."

First, Mr. Fayer, who are you referring to when you say "we"?

A Eastern Service Corporation.

Q You consider yourself as part of the Eastern

Service Corporation?

A This was a -- just "we." I'm the attorney. I'm using a "we" statement.

Q So you did, you aided in getting counsel for these people, Schiller, Fey and Behar?

A Yes.

Q How did you aid in getting that counsel?

A For example, when Fey came up to me he was a former employee. He had told me that he had been subpoenaed. I told him that he should get an attorney and I called and he was in my office. I called and I guess I probably -- Harry Bernstein -- and told him that Fey had been served with a subpoena. He needed an attorney. And Harry said, "Okay." He would foot the bill.

I called, I think Fey was represented by A. Brodsky, I am guessing. I think it was A. Brodsky at the time. The same lawyer for Florence Behar, who was an employee of Eastern. Either Brodsky or Boitel.

I am not certain who represented which, but the same lawyer with Schiller.

Q Did you discuss their cases with them?

A Did I? I think the only one I discussed a case with is Fey. Florence Behar was, I'm speculating, I think I might have discussed it with Fey, probably Florence

Behar was still an employee. So she just went down to the attorney. I don't think I discussed it with her.

I don't think I might or might not have discussed it with Schiller, but Fey I remember definitely that I don't know.

Q Did you discuss it with him in your professional capacity as an attorney?

A With Fey, yes. He asked me for my advice and I gave it to him and I then called Brodsky to find out if Brodsky would represent him. Brodsky said, "Send him down."

Q Did you discuss the facts with him?

A With Fey?

Q With any of those individuals named?

A No.

Q But you gave them legal advice?

A Yes. I told them the best thing for them to do is to sit tight until they spoke with an attorney.

Q Did you discuss with them any other avenues they might take involving this investigation?

A No. I was not going to represent them.

Q But you offered them legal advice; is that right?

A Yes, sir.

Q Do you offer legal advice before discussing fully the case with your clients?

A Advice of this nature, yes. I fully believe that a man should sit tight and say nothing until he sees an attorney.

Q Mr. Fayer, are you aware of any advtantages that might be gained by an individual who cooperates with the Government?

A Am I aware of advantages? Yes.

Q What are the advantages?

A Reduced plea, basically they can also reduce the number of counts or make it a one count. They can reduce the seriousness of the offense.

Q Did you discuss that with Frank Fey at all?

A No.

Q Florence Behar?

A No.

Q Roy Schiller?

A No.

Q Edward Goodwin?

A No. That would have been something for their attorney to discuss with them.

Q You stated to us today you represented them. You advised them in a legal capacity; is that correct, Mr. Fayer?

A I was advising them as an attorney to keep quiet until they worked it out with an attorney, a deal with them, and I still believe that.

Q Mr. Fayer, I refer you to page 27 of the transcript, top of the page, the second statement you made: "This is the thing. Now, the answer is here, what do you gain? And that's the real, that the real $64,000 question question. What do you gain? You can only lose. You can't gain."

Is that the advice that you gave to Goodwin concerning his testifying and cooperating with the Government, Mr. Fayer?

A Not insofar as his testifying. Insofar as his answering any questions with the FBI, the FBI, it's my understanding they're not empowered to make any deal or negotiate with him. He had nothing to gain by saying a word to the FBI.

Q At any time throughout this entire evening, did you discuss with Mr. Goodwin the advantages of cooperating with the Government?

A No.

Q Mr. Fayer, I refer you to page 78 of the transcript, your statement in the middle of the page:

"I have representatives, I have engaged, I'm shall we say directing things. The theory is I, we have engaged various attorneys for Eastern Service Corporation."

Mr. Fayer --

A We had various attorneys for various parties in the situation. Those were the attorneys who had met with me and asked me information about the background and so forth and I've been meeting with them.

Q But you continued to give those people legal advice; is that correct, Mr. Fayer?

A Which people?

Q Fey.

A Not Schiller.

Q You told them to take the Fifth, Schiller, Fey and Behar?

A I told them I would represent them absolutely keeping quiet until they spoke to their attorney. Then, they sat down and they all engaged counsel and they met with their counsel representatives.

Q Mr. Fayer, page 53, starting with Rose Bernstein's statement near the top of the page:

"Al, isn't it true in order, in order to prove certain things strictly, wouldn't there be a third party to see?

"Fayer: No. You see, the thing is this. Not necessarily a third party. We could happen to have a check.

"Rose Bernstein: You'd have to have a check.

"Fayer: You'd have to have, uh, the bank deposits."

Mr. Fayer, is it still your testimony you had no knowledge of Harr[illegible]t & Rose Bernstein's involvement with Mr. Goodwin?

A Of course we're discussing proof.

Q What kind of proof are you discussing?

A Any type of proof to prove a case. At the beginning of this transcript, Goodwin asked me the question as to whether an accusation is sufficient. I said that you need proof.

The bottom of this page, I said the very same thing. A naked accusation is not sufficient. You must have some proof and I don't care whether, checkbook, deposit, testimony, but you must have proof.

Q Proof as to what kind of crime, Mr. Fayer?

A Any kind.

Q What kind of crime with books or bank deposits or checks or --

A Checks. This was Goodwin accepting bribes.

Q From whom?

A My belief was from other mortgage companies. That's why he was so concerned and this is why he wanted advice. This is why I met with him.

MR. WOODFIELD: May I just have a moment?

THE COURT: Take all the time you wish.

Q Mr. Fayer, page 33 of the transcript, your statement in the middle of the page:

"Don't forget I said we know, let's not kid ourselves -- uh -- we have for our own benefit been keeping our fingers on the pulse of this thing."

Mr. Fayer, in that statement again what did you refer to when you said "for our own benefit"?

A The various attorneys had all been speaking to each other determining who had been down before the Grand Jury and who was testifying and so forth. The rationale, of course, being they wanted to know how far the investigation had progressed.

As to whether it was against only one company or a number of companies and so forth. That's one of the ways they found out that there were a number of companies being investigated because there were employees of various companies.

Q One being Eastern?

A One being Eastern, yes.

Q Mr. Fayer, did you believe that if Mr. Goodwin's statements concerning bribes weren't true, would they hurt Eastern at that time?

A If they weren't true?

Q Yes.

A Certainly they could hurt Eastern.

Q Mr. Fayer, you were aware then that Harry and Rose Bernstein made an offer to pay Mr. Goodwin's attorney's fees; is that correct?

A Well, let me put it this way: I was aware of the fact that they had made an offer to see that his attorney fees were paid. Whether they were going to pay the fees, give it to him as a gift or whether lend the money or not, I did not know. I did know, however, that they had told me that in the Florida situation with the stepson, they never got anything back from him.

So that it would not have surprised me if they were going to pay for the attorney fees themselves.

Q Well, you steered them right to Mr. Bernstein in your statement on the tape of the 12th; isn't that correct, concerning attorney's fees?

A Yes. I didn't know whether it was going to be a loan or gift or what. Wouldn't surprise me if it was a gift or whatnot.

Q At that time, you were aware of Mr. Goodwin's allegation concerning bribe payments; is that right?

A No. I suspected them but not as far as the Bernsteins are concerned.

Q Bribe payments; that is, receiving bribes from various individual lending institutions; is that correct?

A I had assumed that to be so, yes.

Q One being Eastern Service Corporation?

A No. They denied constantly they had ever paid five cents to him.

Q In the statement referred to previously, when Harry and Rose Bernstein and yourself said, they'll deny it, concerning Mr. Goodwin's statements, what again are they going to "deny"?

A If Goodwin were to cooperate and if Goodwin were to make an allegation against them, they had said they had never paid it and they would deny any such allegation.

Q So you were aware of the possible conflict between Harry and Rose Bernstein, paying for an attorney for Mr. Goodwin, an individual who could potentially testify against them; is that correct?

A No. At that point there was no conflict.

Q Mr. Fayer, do you think that Mr. Bernstein would have paid Mr. Goodwin's attorney fee if he had testified in the Grand Jury?

A In my opinion, yes. In my opinion, they would have. Goodwin would have retained an attorney and the attorney would have asked for a retainer. Goodwin would have come to them and they would have either loaned or given him the money.

Q Is it your opinion the Bernsteins would have offered and given Mr. Goodwin a job in Florida if he testified in the Grand Jury against the Bernsteins?

A If he testified against the Bernsteins?

Q Yes.

A No, I don't they they would have given him a job.

Q It is your contention that that offer, the job in Florida and the payment of attorney fees, had nothing to do with Goodwin's testifying in the Grand Jury, testifying concerning bribes, concerning the Bernsteins?

A That offer of a job in case he lost his job, in case he had refused to testify, in case he had received bribes from any of the other mortgage companies. They were friends and they'd back him up and give him a job.

Q So your answer to the question is, No?

A May I have the question read back, I'm sorry.

THE COURT: Rephrase the question if you want it answered.

MR. WOODFIELD: No, I don't wish to ask the question, your Honor.

Q Page 68 of the transcript, Mr. Fayer, down at the bottom of the page where Harry Bernstein states:

"If you say anything, it blows everything."

Were you present when that statement was made, Mr. Fayer?

A I really don't know. I think so but I don't remember. I'm going back -- I don't remember having left. I would assume I was present.

Q Right above, where Mr. Bernstein says, "I am working behind the scenes," throughout this conversation, Mr. Fayer, throughout those statements made by Mr. Bernstein, what did you believe it to be referred to?

A It to be referred to? One of the questions was as to how far the Grand Jury had been progressing with Eastern and naturally Harry Bernstein was speaking to every one of the lawyers involved to find out what they knew, if anything. He was definitely working on that.

As far as, "If you say anything, it blows everything," if Goodwin said anything he would be finished.

Q Who would be finished?

A Goodwin.

Q So is it your statement that Harry Bernstein was not referring to himself but referring to his respect and concern for Mr. Goodwin?

MR. KORSHIN: I object. I think the question should be what the witness's understanding of the statement is, not what Bernstein meant by the statement.

Q Was that your understanding of what Mr. Bernstein meant?

A Yes, that was my understanding. The Bernsteins constantly denied giving the man anything.

Q Mr. Fayer, have you ever discussed Mr. Goodwin's case with Mr. Goodwin other than on this occasion?

A No.

Q Had you ever discussed it with his attorney, Mr. Roll?

A No.

Q Throughout this transcript you make numerous -- in fact on numerous occasions you stated in the transcripts to have his attorney stay out of the case. Do no investigating; is that right?

A I don't recall no investigating. I certainly felt his attorney had misadvised him and should stay out of the case at that stage. No question about it.

Q Bottom of page 50, starting with Rose Bernstein:

"But tell him not to do any investigation (inaudible).

"Harry Bernstein: Don't do any investigating on his own, don't do anything. Just don't worry.

"Fayer: Please stay out of it. Please.

"Goodwin: Stay out of it.

"Fayer: At the point, the point --

"Rose Bernstein: Tell him not to do any investigating.

"Harry Bernstein: You can tell him it may be dying down.

"Fayer: Right. Yes, but if you are subpoenaed --"

Again, on other pages and this page, Mr. Fayer, there are numerous references to having his attorney stop an investigation. What was your purpose in offering and giving that advice to Mr. Goodwin?

MR. KORSHIN: I object. Counsel is interpreting Mr. Fayer's words, "Please stay out of it," in a way which may not be correct. I think the witness should be asked to whom he was addressing that remark.

Q Whom were you addressing this remark to, Mr. Fayer?

A "Please stay out of it" was Rose Bernstein.

She had no right to tell him not to do any investigation.

Q You only have the right because you were the attorney, right?

A Harry Bernstein said the same thing and I didn't think it made any sense. Because as far as I was concerned, the attorney, and as I said, if you are subpoenaed then is the time to get an attorney. I certainly didn't think that Roll was doing the job he should have done.

Q That determination was made solely on the knowledge that you had that Roll had suggested cooperating with the Government; is that correct?

A Yes. At the first meeting with the FBI, Goodwin had said he was a possible, the FBI told him he was a possible defendant or a prospective defendant in a, I don't remember what he had told me, defendant in a case.

At that point, I felt it was premature for anyone to discuss cooperating with the Government.

Q Again, on page 75 at the top of the page, Mr. Fayer:

"Harry Bernstein: Tell him not to do anything. Drop it right here and there because the (inaudible) -- it is under control.

"Fayer: Tell him to drop it. In the event you're served with a subpoena, then we'll seeabout a top drawer. Then you're, then you're top drawer man."

What is it you are referring to there, Mr. Fayer?

A Drop any discussions about cooperating until such time as he can work something out or is served with a subpoena.

Q Not an investigation?

A Not the investigation, no.

MR. WOODFIELD: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. KORSHIN:

Q Mr. Fayer, you were asked on cross-examination if you were a member of the board of directors of Eastern Service Corporation.

A Yes.

Q How did you happen to become a director?

A I was the attorney for the corporation and they needed at that time, I don't remember what the certificate of incorporation was -- X number of directors, and I was one of them.

Q Did you ever perform any duties or functions as director of Eastern Service Corporation?

A No.

Whose fingers were you keeping on it?

A Eastern Service.

Q No question?

A And their employees.

Q And their employees?

MR. KORSHIN: I have no further questions.

MR. WOODFIELD: I have some questions.

RECROSS-EXAMINATION

BY MR. WOODFIELD:

Q Mr. Fayer, when you were advising Mr. Goodwin on the 9th, your concern was Eastern Service Corporation; is that correct?

A My concern on the 9th was Goodwin and there is no doubt that I was fully aware of the fact that any advice or anything I might say could possibly inure to the benefit of Eastern Service.

Q Could?

A Could.

Q In your experience as an attorney, do you consider that a conflict of interest, Mr. Fayer?

A [illegible].

[illegible] How many criminal cases have you handled in the years as an attorney, Mr. Fayer?

A Not too many. I really don't know, I am not a criminal specialist, if that's what you're driving at.

Q When was the last time you handled a criminal case?

A Seven, eight years ago, six, nine years ago, about then.

MR. WOODFIELD: I have no further questions, your Honor.

MR. KORSHIN: I have no questions. The defendant rests.

If the Court pleases, I do have a question, if I may.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. KORSHIN:

Q You made a statement, Mr. Fayer, in response to a question. You didn't think there was any conflict of interest. Why not? Can you explain that answer?

A At this stage Goodwin had been interviewed by the FBI and he was seeking advice as to a course of conduct to pursue.

Q With whom?

A With me.

Q No. To pursue a course of conduct with whom?

A With the Government.

Q Go ahead.

A My personal feeling was at this early stage in the game, he would best -- his best interest would be served by sitting tight. If things developed, then he'd better get an attorney, someone else other than myself.

Q You felt that did not create a conflict?

A No.

MR. KORSHIN: Nothing further, your Honor.

(Continued on next page.)

THE COURT: I have some questions, if there is no objection.

MR. KORSHIN: No objection at all. I welcome them.

THE COURT: On page 22, in the middle of the page, you were quoted as, "I told her you refused to testify." I take it that was Rose; is that right?

THE WITNESS: Yes.

THE COURT: At which point, Goodwin says, "Everybody just takes the Fifth." And you say, "That's right." Were you advising Goodwin to take the Fifth?

THE WITNESS: We are talking about everyone that had been called down to the grand jury that we knew of as far as Eastern or Eastern employees had pleaded the Fifth. Every one of them, to our knowledge at that time.

THE COURT: Did you consult with their attorneys in connection with the advice to take the Fifth?

THE WITNESS: Oh, yes. I was fully aware of the fact. I had met with Judge Rifkind and I had met with the prosecutor. We had all been handling this situation in concert with each other, all the attorneys. We all were aware of the --

I was aware of it. No question in my mind.

THE COURT: Were you aware the tactic was for all of them would be to take the Fifth?

THE WITNESS: Yes. Every one of them had been advised to take the Fifth. They had so pleaded.

THE COURT: Weren't you concerned for your clients at that time that a breach by Goodwin would destroy that tactic?

THE WITNESS: Well, I didn't feel that Goodwin was involved with the Bernsteins. The Bernsteins had denied this, your Honor, to me. They had denied it to Judge Rifkind and they had denied it up and down the line.

THE COURT: But you were an experienced man. You knew there was a possibility they were lying, didn't you?

THE WITNESS: There was a possibility they were lying. I really felt if they would have told anyone the truth, I think they would have told me. I think I have been representing them for a number of years.

However, at that point I had no alternative but to believe them and --

THE COURT: On page 29, in the middle of the page, there is a series of statements which we have now constructed to read as follow, Rose is saying - I take it this is a hypothetical - "But we have testimony that you took money from the Bernsteins." He is proposing that that's what the FBI agent will tell Goodwin?

THE WITNESS: Yes. That would have been my understanding.

THE COURT: Then you say, "Yes." And then Goodwin says, "No."

Then, Rose Bernstein, I take it, addresses you and says, "Don't you think at that point Ed," meaning Goodwin, "should have said that testimony was true"? That was directed to you, wasn't it?

THE WITNESS: Yes.

THE COURT: Then you say, "Wait. Should have said it's a lie, but, however, what's the difference?"

Were you advising Goodwin to say it was a lie?

THE WITNESS: No, that's in the past, your Honor. This refers to the time when the FBI agent had interviewed him and apparently he had been interviewed by the FBI. If he had been interviewed, I should have denied it instead of standing pat.

THE COURT: You hadn't asked him if it was a lie?

THE WITNESS: No.

THE COURT: How did you know it was a lie?

THE WITNESS: I assumed it was a lie.

THE COURT: How did you advise him to tell a man that is a lie without inquiring?

THE WITNESS: This was in the past, your Honor. In other words, if the statement had been a lie, he should have said it's a lie.

THE COURT: I see.

MR. KORSHIN: If the Court pleases, I think perhaps there should be some classification about U.I. and L. that refers to mortgage mortgage broker; that referring to mortgage broker firm.

THE WITNESS: Your Honor, I said, "What's the difference?" It was over and done with.

THE COURT: Directing your attention to the lower portion of page 45, you are quoted as saying, "We assume that everybody sits tight." Was that in connection with the testi~~ng~~mony ~~for~~ that all the attorneys had agreed upon to say nothing?

THE WITNESS: Oh, yes. Because the feeling had been and I expect the experiences that in those white collar claims, unless someone breaks down, it's very, very difficult to establish a case.

THE COURT: And you were concerned, I take it, with protecting Eastern, and, indirectly, the Bernsteins in connection with that tactic?

THE WITNESS: Yes. They were a client of mine.

THE COURT: Now, at the bottom of the page then, you say, "Somebody, this is why I am here tonight."

There that night to prevent Goodwin from talking?

THE WITNESS: No, sir. Goodwin had said that he was considering cooperating and this is what I was told. And my advice to him would have been not cooperate at the FBI level. That's why my feeling was he asked for the advice and that's why I wasthere that night. That's why I told him if he does, he is going to have the beginnings of a chase.

And this is why I says, "If it goes any

further, I think" -- your Honor, I have said this before, I said I don't know on how many occasions here here, "If this goes further, get an attorney, get an attorney."

But at that stage of the game, I believe then and I believe now you don't talk until you've made a deal or done something.

THE COURT: You hadn't asked him whether he had made a deal, though, had you?

THE WITNESS: No. I had been told that he had not. I had been told that he had a conversation only the day before and from one day to the next, I didn't think he had anything.

THE COURT: As an experienced attorney, don't you know it is undesirable to talk to one person in the presence of others where there is a possible conflict in getting their information?

THE WITNESS: Your Honor, I was dealing with people who had been advised were friends. They were friends for years. Goodwin, as I was told, I was -- I firmly believed, was in need and wanted some additional advice.

If he was -- it was the additional advice, I had no objection to sitting down and giving him my opinion in the matter.

I made it very clear that I would not represent him but at this early stage, I truthfully saw no conflict at this stage of the game, your Honor.

THE COURT: Did you know his then attorney by reputation or otherwise?

THE WITNESS: No. I didn't even know who he was.

THE COURT: How could you say at the bottom of 48, "He just isn't qualified"?

THE WITNESS: It is my opinion, and I say this to your Honor with all due deference, I am repeating myself, that when a man sits down for a couple of minutes --

THE COURT: How did you know that he sat down for a couple of minutes?

THE WITNESS: By who? Rose Bernstein.

THE COURT: Don't you think, as an attorney, you have an obligation, if you are giving somebody legal advice, not to rely upon this kind of hearsay from an interested party, who has a conflict?

THE WITNESS: Your Honor, I don't remember whether -- let me answer your question this way: I did not feel I was giving him, shall we say, critical advice at that point. This was merely advice to sit tight and to say nothing, and then get an attorney and I really didn't think it was, shall we say, a conflict or anything there that I would not have said in the presence of anyone else.

THE COURT: Weren't you aware of the fact that a loss of a job would put great pressure on this man not to testify?

THE WITNESS: Your Honor, a very hard question to answer. Let me try to answer it this way:

I knew from what they had said, they had been friends friends for a long time. This is something Goodwin said and they all said. If Goodwin were to lose his job because of his refusal to testify or cooperate, what have you, with respect to any of the other companies, the Bernsteins would certainly Hire him. He was a friend and they'd give him a job. This is what I understood.

I did not think that it would be a situation where the Bernsteins would be involved. My feeling is that they were friends and, having been friends for this period of years, whatever, the thing is they said a number of years.

He was not either taking anything from them or he was not going to for them. There is always a possibility I recognize there is always that possibility.

THE COURT: Did you have, from your mind, at that time that he might testify against them to save his own skin?

THE WITNESS: Yes. There was that possibility but the job offer was made even if he lost his job testifying against someone else.

THE COURT: I don't understand those references to Doug Homburg. I understand he went south to work at one of the branches.

THE WITNESS: This was --

THE COURT: This is on page 71.

THE WITNESS: This was rumor going on.

THE COURT: Was, do you know, if Homburg was under suspicion?

THE WITNESS: To my knowledge, he was in Florida. Just rumor passed he had left. When he left from Florida, the proceeding today.

THE COURT: Now, at the bottom of page 89, there is an exchange that goes like this: Harry Bernstein says, "Like you always were. You were very much evasive.

"Rose Bernstein: If any asks you anything, the answer is no, no no.

"Harry Bernstein: I don't know what you are talking about."

Meaning, I take it, what Goodwin was supposed to say; is that right?

THE WITNESS: I don't follow that, your Honor.

THE COURT: Take your time and --

THE WITNESS: What Goodwin was supposed to say. What was Goodwin saying? When you say I don't know what Harry Bernstein says --

THE COURT: You don't know what that means, all right. Then let's go to the next line.

THE WITNESS: He is referring to something he doesn't understand what somebody is talking about. I am trying to place it, if I may.

THE COURT: Take your time.

THE WITNESS: The only thing I can think of, and this is, I am speculating, Rose Bernstein previously had said if anybody asks you anything, the answer is no. So he doesn't answer any questions.

Henry Bernstein says, "I don't know what you are talking about." I am telling Goodwin to say, "I don't know what you are talking about." I am speculating on that, but that's the way it seems to me.

THE COURT: Then you say, "I tell you this and I can assure this. That these two, as far as anything is concerned, will not talk."

Now, in the context, didn't mean with respect to accusations that the Bernsteins were paying Goodwin?

THE WITNESS: No, I don't think so. What had happened, and I am going back a ways. I had attended meetings with various counsel, and I had attended meetings where the Bernsteins had the stories related previously in the tapes were told. That they would, or not to talk there to plead the Fifth Amendment. This took place in Judge Rifkind's office and this is the story there. Where he had said that if any client of his ever went down to talk first, this on a waiver and those, and I was positive I was merely certain that the Bernsteins would plead the Fifth, if anything was said. That's how strongly it was put.

THE COURT: Weren't they talking on page, 88 and 89, about accusations or possible accusations that the Bernsteins were paying to Goodwin?

THE WITNESS: No, your Honor. I don't see that context.

THE COURT: When Harry Bernstein says at the bottom of 89, "We don't know what you are talking about." He may mean Roses and Harry Bernstein and by "you are" mean Goodwin.

THE WITNESS: I don't think so, your Honor. If you go back and start at page 87, for example, right through at page 87, they denied ever giving anyone anything. They denied, they told it to their attorney in New York, Judge Rifkind. They go along and Rose Bernstein says on 88, "Don't you see what you are doing to yourself," so forth and so on.

And they tell him any time he has to leave, they will give him a job.

Anything, any question, the answer is just say no, he is not get himself involved. I said there is no question that the Bernsteins are not going to talk about anything. So that he is getting no different advice. Then the Bernsteins received --

THE COURT: On page 91, you say, "I would absolutely recommend a refusal to talk. Because of the job, you know where you stand here."

Did you have any expectation that this would in this context in just a position which would lead him to believe that if he did talk, the job would not be his?

THE WITNESS: No, no. Because of the job, his job with the FHA, I had told him before that if anything he said, he was going to lose his job or, rather, if he refused to talk, he was going to lose his job. This is why I recommended a good attorney. I would recommend he get a good attorney and he knows where he stands because he is going to lose his job when he does talk or when he refuses to talk. But that's his problem.

THE COURT: Weren't talking about the job that is referred to on page 89 and before and after that under "week vacation" before he starts with the Bernsteins?

THE WITNESS: Oh, no. Because right immediately after when I said, "Because of the job, you know where you stand here." He is going to lose his job and that's why Harry Bernstein said, "You will still work with us."

THE COURT: I have no further questions.

MR. KORSHIN: I have none. The defendant rests.

THE COURT: Any rebuttal?

MR. WOODFIELD: No, your Honor.

THE COURT: Why don't we take a few minutes' recess and then I will hear argument.

(A short tecess was taken at 12:15 p.m.)

(Continued on next page)

to me.

MR. WOODFIELD: Yes.

THE COURT: I think I first ought to indicate what is not in this case. We're not trying the professional capacity of the defendant or his metier. Nor are we trying a disciplinary action. Although there are ample grounds in the transcript and testimony for disciplinary action in the state courts. I assume the United States Attorney will, whatever the outcome of this case, will take appropriate action to transmit those transcripts to the authorities interested in disciplining lawyers.

We're not concerned because no motion to suppress has been made with respect to the legality of the tapes and their use, although I suppose an argument could be made that the tape of February 9th constituted a violation of somebody's Constitutional right to advice from counsel. Whether this defendant raised that point seems doubtful under the circumstances. But the issue has not been raised, so I don't decide it.

There is no attorney-client privilege problem here, although it was considered a conference among clients and attorneys.

Under the definition of Rule 503 of the Rules as promulgated by the Supreme Court, but not adopted by Congress, Rule 503-A(1) includes within the relationship consultation with a lawyer, "with a view to obtain professional legal services from him."

And under D(5), communications included are those "relevant to a matter of common interest between two or more clients."

Where the clients are consulting in common with an attorney.

Although Goodwin states he wasn't aware of the fact Fayer would be present, I credit that testimony once Fayer was on the scene, Goodwin never told him that he didn't want legal advice or he wasn't concerned about legal advice. So that Fayer under the circumstances possibly might have a doubt about whether he was giving legal advice to Goodwin and Goodwin's implied request, particularly, since apparently this had been the suggestion of Rose Bernstein when Rose Bernstein had contacted Fayer. Because there would be no right to prevent conversations from being revealed since the privilege belongs to the Bernsteins, if any, and to the witness, Goodwin, weighed whatever privilege he had.

But with respect to the problem of Fayer relationship, it is arguable he could have believed that he was consulted in order to obtain professional legal advice, with the possibility of being retained. The Court recognizes it is the practice of clients from to time, even though they are represented by one attorney, to seek advice from another attorney. Whether that was unethical in the circumstances isn't before us. We're not also concerned here with the problem of punishing the defendant for the advice that he gave, although it may have inhibited the Government in its proper quest for information.

As the Supreme Court has recently pointed out in its opinion of January 15, 1975, in Mannes v. Meyers, 43 Law Week 4143 at page 1448, "The privilege against compelled self-incrimination would be drained of its meaning if counsel, being lawfully present... could be penalized for advising his clients in good faith to assert it. The assertion of the testimonial privilege as many other rights often depends upon legal advice from someone who is trained and skilled in the subject matter and who may offer a more objective opinion... If performance of a lawyer's duty to advise a client that a privilege is available exposes a lawyer to the threat of contempt for giving honest advice, it is hardly debatable that some advocates may lose their zeal for the rightness and independence. If his lawyer may be punished for advice so given there is a genuine risk the witness exposed to possible self-incrimination or while not being advised of his rights, then the witness may be deprived of the opportunity to decide whether or not to assert the privilege."

Again, on page 4151 Mr. Justice Stuart concurring says: "To punish him for performing his professional duty in good faith will be an arbitrary interference with his client's rights to presence and on retaining counsel, thus a denial of due process of law."

I'm directing myself to the particular questions that are before us. We have first 72 CR 589; in essence that accuses the defendant of aid and abetting Bernstein, Harry and Rose, in providing something of value to Goodwin to prevent him from testifying. Beyond a reasonable doubt the Court would have to find on the basis only of the testimony before us and, of course, without hearing the story of the Bernsteins as subject to that story and testimony in evidence they were offering a job in payment of services in order to induce Goodwin not to testify. But the Court must find a reasonable doubt based upon the testimony of the defendant himself that he truly believed the Bernsteins' innocence and that he did not understand the nature of the transaction as one to pay Goodwin for not testifying.

In addition, there is a reasonable doubt in the Court's mind as to whether the agreement had not already been made on the 8th with respect to that matter.

The defendant's testimony strikes the Court as being naive to the point of foolishness. It is difficult to believe that anyone could remain in practice for so many years and not understand what the Bernsteins were doing and not believe that the Bernsteins were using him to aid and abet them in their scheme.

Based upon the defendant's demeanor the Court does have a reasonable doubt as to that point. It does have a reasonable doubt as to the state of mind and intention of the defendant Goodwin, although Goodwin did aid and abet the Bernsteins. His intent with respect to corruption as charged in 72 CR 589, he did not beyond a reasonable doubt do it willfully and intentionally.

MR. KORSHIN: When your Honor said Goodwin, I think you meant Fayer.

THE COURT: Fayer, I meant. Accordingly,

72 CR 589 is dismissed. The finding is made in connection with that indictment and, of course, does not indicate any view of the Court with respect to the Bernsteins or Eastern Service Corporation, since they have not had their day in court and it is based solely hypothetically on the facts as reviewed in the prosecution of this defendant; solely for the purposes of this prosecution.

Now, as to 75 CR 43, I find that a very difficult case. And I'm going to reflect on it over the lunch hour and will take a recess until 2:10.

(Luncheon recess taken at 1:10 P.M.)

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AFTERNOON SESSION

(2:10 P.M.)

THE COURT: Continuing our discussion of 75 CR 43, I find beyond a reasonable doubt that the defendant intended and that everybody present including Goodwin, Rose Bernstein, Harry Bernstein and himself understood he was advising Mr. Goodwin not to testify voluntarily before the Grand Jury, and that this was the great danger that all of them were concerned about.

The references to a subpoena are fully consistent with that finding. What the defendant was telling Goodwin was that Goodwin should not go voluntarily, should not give any information and that if he was subpoenaed, then he would require the advice of counsel who would be supplied at the appropriate time.

This finding of fact beyond a reasonable doubt, however, does not solve the problem in the case raised by a need to show that the advice was given corruptly. 1503, Section 1503 of Title 18 provides:

"Whoever corruptly endeavors to influence any witness, that includes a witness who is a prospective witness about to be called or appear voluntarily."

The question of what corruptly means is not at all clear from the cases. I started by saying at the beginning of the case, I had read the two cases cited by the attorneys for the Government and curiously in footnote 19 of Mannes vs. Meyers, the Supreme Court majority opinion says, "We recognize that there may be instances where advice to plead the Fifth Amendment could be given in bad faith or could be patently frivolous or for purposes of delay and such instances would present far more difficult issues than here."

And the two cases cited are Cole, 329 F. 2d 437 and Cioffi, 493 F. 2d, 11 at page 1119. I suppose another instance would be suggesting that the Fifth Amendment be pleaded or that a witness not testify when the witness wants to voluntarily appear.

In order not to protect the witness but to protect some other person or entity. But that isn't completely clear here. For one thing, the defendant may have intended primarily to protect Eastern Service Corporation and Harry Bernstein and Rose Bernstein and yet may have also wanted to give Goodwin advice that would assist Goodwin.

Also, it is not clear at the moment, at least, whether the defendant was advising Goodwin as an attorney or in some attorney-client relationship. The definition of corrupt is not clear from the cases. In Cioffi at 1119 the Court says, Judge Martley defined endeavor as "any effort or any act, however contrived, to obstruct, impede or interfere with a witness," and she told the jurors that any such endeavor is corrupt.

Obviously, that can't be a complete definition or every lawyer telling his client not to volunteer before a Grand Jury or to plead the Fifth Amendment would be guilty of corruption. Then, the Court proves the Cole decision as charged by Judge Martley, "I charge you that while a witness violates no law by claiming the Fifth Amendment privilege against self-incrimination in a Grand Jury, one who bribes, threatens, coerces a witness to claim it or advise with corrupt motive a witness to take it, can and does obstruct or influence the administration of justice."

But that is completely circular because it doesn't tell you what a corrupt motive is. Neither with all due respect does the Second Circuit opinion where Judge Martley -- or does Judge Martley's suggestion? -- same thing is true in the Cole case. It's true of all the other cases that I have been able to find, including U.S. vs. Polacove, 192 F. 2d, 333;

U.S. vs. Cohn,202 F. 2d Sub. Div. 587; Knight, 310 F. 2d, 305; Broadbent vs. U.S., 149 F. 2d, 580.

True of the proposed charge in Devitt, in Blackmore, the Federal Jury Practice & Instructions, 1970, Section 27.08, "If done voluntarily and intentionally, with a bad purpose of accomplishment either with an unlawful end or result or a lawful end or result by some unlawful means or method." Whether this is a lawful means or a lawful end is the exact issue before us.

Again, the charge is, "The motive to act corruptly" is ordinarily a hope or expectation of benefit to one's self or some aid or benefit to another. Obviously, that definition is useless because every attorney would be guilty since he is trying to benefit his client or somebody else. Black's Law Dictionary is useless for corrupt; it means "spoiled, tainted, visited, deprived or debased."

Corrupt intent involves the purpose to violate the law. That doesn't tell you what a violation of the law is, so it's circular.

Webster's Third New International Dictionary, "Corrupt is deprived, evil, weakened, debased," showing the morality characterized by bribery or selling of political favors or other improper or political or legal actions or arrangements. It does not tell me what is improper.

I haven't received a brief from defendant and I haven't received a satisfactory brief from the Government, although they have done what they could. I don't believe I ought to decide the case until I have the matter brief.

MR. GOULD: Your Honor, in our brief we had the same problem. We did look up the law but looking at the facts pattern, particularly in that Cole case as to what it was they thought added up to corrupt there, and in fact the pattern particularly was identical to --

MR. WOODFIELD: Same with the Cioffi case, your Honor.

THE COURT: Not so sure it was.

MR. GOULD: The facts are --

THE COURT: Those were all people involved in the underlying conspiracy, not in the training.

MR. WOODFIELD: Your Honor, again I'm -- I'm sorry, your Honor; I could have --

THE COURT: Cioffi, yes.

MR. WOODFIELD: Again, your Honor, on Cioffi, at 1119, the fact pattern is very similar in the sense that that case, the defendant Cioffi was aware of the relationship between Shearer and Mirando. And aware of that relationship, his endeavor to influence the testimony is corrupt and that's our argument here. The fact that Mr. Fayer was aware of the relationship between the Bernsteins and Goodwin and his efforts thereafter to induce Goodwin's testimony is corrupt.

THE COURT: It's so broad to cover every attorney.

MR. WOODFIELD: Excuse me. So broad that every attempt?

THE COURT: Every attorney giving advice

MR. WOODFIELD: No, your Honor. Not when he is representing the individual. Not when he's a client. Not when there is good faith such as Mannes vs. Meyers case. There specifically they rule out six times in that opinion, they say good faith.

THE COURT: What is "good faith" here? That's part of the problem. Obviously the defendant was interested in saving the Bernsteins and the corporation, that's clear. He has admitted it on the witness stand and the transcripts are pregnant with that. It is not clear he wasn't also trying to help the defendant. The prospective witness Goodwin. Not clear to me what the relationship was, that is, whether he was in a client-attorney relationship. It's a very difficult problem of ethics and law. I really don't have the fullabrief on it. I find it very troublesome.

MR. GOULD: Your Honor, as to the client-attorney relationship, it was clear from this transcript that Mr. Goodwin had an attorney and had a retained attorney. Now, whether in the future he would --

THE COURT: I know, but you know it doesn't, I'm not sure but you may be right. I'm not sure that under the Code of Professional Responsibility it is improper for one attorney to see a client even though he knows that client is represented by another attorney.

Is that like an attorney seeing a party, an adversary party represented by his client'sattorney, which is clearly unethical? That wasn't that and it's a very curious problem. I really think that you're going to have to brief the case more fully. I think you have to go into the professional responsibility code back there to some extent so we can get some feel for what's right and wrong here, what is corrupt. And you may have to go into some of the background of what is the attorney-client relationship.

When does it start and what is the problem when, you have a conflict of representing people. All of those I adverted to at the beginning of my discussion before I actually turned to 72 CR 589, the first indictment. I'm not making the finding with respect to any of this. The only finding I've made on 75 CR 483, is that he was advising, do not go voluntarily before this Grand Jury.

He was not merely advising him, don't go to the FBI, he was saying, do not testify before the Grand Jury. If you get a subpoena, then we'll get you an attorney.

What is corrupt under those circumstances isn't clear to me and I'd like more guidance.

MR. GOULD: Your Honor, under the -- there is one point in which Mr. Fayer, I believe on cross-examination where they're talking about the part of whether Mr. Goodwin's attorney should investigate further, not talking about the government agency, your own lawyer isn't going to bring. When Mr. Fayer stated, please stay out, Goodwin stayed out. Those people were talking, Harry Bernstein, don't tell him to start investigating.

If your Honor would like for us to you the tape again because I think on the tape it's very clear that statement was not in effect made to Harry

Bernstein. Certainly Goodwin didn't state to Bernstein in the third -- Mr. Fayer, I think that was very heavily the point because we're talking perhaps Mr. Fayer is telling the man's own attorney not to investigate. That certainly couldn't be to protect Mr. Goodwin. I'd like to make that tape available, if you think it's necessary.

THE COURT: No, I don't think it's necessary because I think we're going to have to brief this. I dislike burdening counsel but I am ~~generally~~ genuinely puzzled and I never have heard of a case that raises this kind of point.

MR. GOULD: I looked at the ABA Code cover to cover on this, your Honor, and it does talk about opposing parties. Does the spirit of that, the way I read it as Mr. Fayer conceded on cross-examination, there came a time -- I think it is incredible -- he didn't know it -- even assume what he says is accurate it wasn't until somewhere in the middle of this conversation that he was aware, at least, that Mr. Goodwin might have been levelling charges. And the Bernsteins: "we'll deny it." That at least --

THE COURT: But even assuming that's true.

MR. GOULD: Isn't this at variance to Mr. Bernstein's, no question about it?

THE COURT: But is mere conflict that your client might possibly have enough to make advice in good faith to one of them? Whatever good faith means, they're corrupt.

MR. GOULD: Mr. Fayer said himself he got other people different attorneys because there would be a conflict otherwise. And now here he is --

THE COURT: He was suggesting just giving them temporary advice in a sense, in connection with a consultation on whether he should get another attorney. See, part of the problem is that Mr. Goodwin never said to him, I don't want advise from you. I've got my own attorney, in essence, and led him on.

I don't think that's all decisive and it's a very difficult problem, as I say, involving an issue of ethics. In view of the attorney-client relationship as reflected in the privilege, because that's where most of these cases turned up and in criminal law --

MR. GOULD: Will it reflect on ethics whether it has been a violation of the Code or does it reflect on the intent of the act toward an attorney who has been running things the way Mr. Fayer says he has been running Eastern Services, talking to Judge Rifkind who confides in him and tells him what the client is doing. Somebody goes down to Florida, Atlanta, and he can run this huge business. Would an attorney like that be so naive, choose your own terms, your Honor has to sit there and say, well, this man has an attorney and I'm -- I have the Bernsteins. He's going to level charges against the Bernsteins and the Bernsteins are offering him a job in Florida, offering to pay attorney fees. I'm going to advise him and feel that there is nothing wrong with it.

This is not as he himself stated, several times in the transcript. You know, my reputation, I'm sure he had a very good reputation. He had run a very big company.

THE COURT: Problem I'm concerned with is we're not dealing with a question of whether there is a violation of ethics. That's another question. I don't know whether there is or not. It may have a bearing on whether this is corrupt and we're dealing with a criminal statute. And I haven't found anything very helpful.

MR. KORSHIN: Which may be unconstitutionally vague.

THE COURT: That's possible, too. But I haven't got any brief from. I don't say that critically, I think you handled the case very well and so have the

Government's attorneys. But I would like some help unless you don't feel it warrants a brief.

MR. KORSHIN: I would be very happy to give your Honor a brief but I would like to get the transcript first.

MR. GOULD: Your Honor, do you wish us to give--

THE COURT: Well, I'm not quite sure. I don't think there is any point in making any further findings. I just made that one finding because I think it's critical. If I made that finding adverse to the Government, that would have been the end of it. Because the Government charges, the Grand Jury not Federal Bureau of Investigation -- well, how much time do you want? How much time do you want, and I'm not going to rush you. I'd like a thorough job on it because I'm troubled by it.

MR. KORSHIN: Could I have until the end of --

THE COURT: April 1st, fine.

MR. WOODFIELD: Again, just to enlighten by discussion. This hopefully narrows it down in our vestigation into this work. I take it as the key, as the definition of corrupt --

THE COURT: It seems to me, although I'm not sure, maybe affected to some extent by what the relationship was between this defendant and Goodwin.

MR. WOODFIELD: My interpretation of the word "corrupt" or not interpretation, not defining it but in a sense this statute would be a factual determination; that is, what is in the mind of the inducer such as Mr. Fayer.

standard?

THE COURT: Can you articulate a standing?

MR. WOODFIELD: I can't articulate but I can say based on the facts of those cases and this case, I don't want to argue now, to end up briefing to you a factual argument. We satisfy the facts of these cases and --

THE COURT: Better do the best you can.

MR. WOODFIELD: Because I believe that a search of the definition of the word "corrupt" would bring results probably similar to yours.

THE COURT: Well, maybe.

MR. WOODFIELD: Factually, we satisfy both Cioffi and Cole.

THE COURT: I prefer to be able to articulate substantive standards before I apply facts to them. And perhaps you can be of some help. Maybe we can move it forward or back.

MR. GOULD: Even our machine didn't help us.

THE COURT: It's a difficult question. We want to get a definition that doesn't make a criminal of every lawyer.

MR. WOODFIELD: It might be helpful here to get the full charge that was given in Cioffi.

THE COURT: Possible you might, although I might suspect you can find what we just found.

MR. KORSHIN: Your Honor, anticipating what was on your Honor's mind, I didn't make notes of the cases as you gave them. I'd rather not have to wait for the transcript.

THE COURT: You can have this whole thing.

MR. KORSHIN: Just make a list and I'll do it.

THE COURT: If you will, this is what's on my --

MR. WOODFIELD: We have a hung judge.

THE COURT: Not yet, no. Not a hung judge, you have a judge who wants to have time to reflect.

MR. KORSHIN: I assume the defendant's status remains as it was?

THE COURT: Yes.

(Hearing adjourned at 2:25 P.M.)

- - -

THE COURT: Although at the last session of this trial I asked for briefs, I have given the case a great deal of consideration in the interim and I had my law clerk call the parties to inform them that briefs will not be necessary because I have decided that under no view of the law and the facts can I determine beyond a reasonable doubt that the defendant is guilty. There is a reasonable doubt necessarily because I must and do credit the defendant's testimony with respect to what the Bernsteins said to him. It is fully consistent with what I heard on the tapes and it's consistent with the way the Bernsteins apparently generally manipulated people.

As far as Goodwin is concerned, the transcript clearly reveals in a sense he led Mr. Fayer on to believe what the Bernsteins had apparently told him and that is that Goodwin wanted legal views from Fayer with respect to whether he should continue to rely upon this attorney or whether he should get a new attorney.

I'm also in part basing the decision on the fact that the attorney that he did procure was a respected member of the bar, his present attorney, who I do not believe was subject to manipulation by the Bernsteins or by Mr. Fayer.

Given the burden of proof in a criminal case, therefore, the defendant must be found not guilty of both counts.

The United States Attorney is directed to provide a transcript of the record of this case and of the recordings and typed transcript of those recordings to the appropriate disciplinary committee in the Second Department.

I make no findings on whether he violated any legal obligations or moral obligations. That's not my duty.

MR. DE PETRIS: The Government would request under Rule 23(c) special findings of fact.

THE COURT: I have made those findings. What other areas do you want me to find?

MR. DE PETRIS: A number of areas. Should I address your Honor's --

THE COURT: Give me the questions; I'll give you the answers.

MR. DE PETRIS: First, whether or not there was a grand jury proceeding pending in this court at the time.

THE COURT: There was.

MR. DE PETRIS: Is that beyond a reasonable doubt?

THE COURT: Beyond a reasonable doubt.

MR. DE PETRIS: Second, the defendant was aware of the grand jury proceeding.

THE COURT: I so find beyond a reasonable doubt.

MR. DE PETRIS: Third, Goodwin was a witness in the proceeding within the meaning of the law; that is the new material fact, and was expected to testify.

THE COURT: I so find beyond a reasonable doubt as I indicated at our last session.

MR. DE PETRIS: Fourth, the defendant knew or reasonably expected Goodwin to be a witness.

THE COURT: I so find beyond a reasonsble doubt.

MR. DE PETRIS: And fifth, that the defendant did endeavor to influence Goodwin to take the Fifth Amendment before the grand jury.

THE COURT: I do not find that beyond a reasonable doubt.

MR. DE PETRIS: Not at that point, your Honor, to the question of corruptly, since as your Honor found the last time they did make that effort to influence him --

THE COURT: No, he didn't. That's part of the problem. What he did say was, "Don't go voluntarily," in my opinion. If he went voluntarily, it wouldn't be a Fifth Amendment situation at all. If you're subpoenaed, to get another counsel, that would have been the Fifth Amendment situation, and he in effect was saying over and over again, "Before you decide on the Fifth Amendment, consult other counsel." I can't make that finding beyond a reasonable doubt.

MR. DE PETRIS: Your Honor does not find that Mr. Fayer made an effort to influence Mr. Goodwin to take the Fifth Amendment?

THE COURT: No, what he did was attempt to as I find beyond a reasonable doubt, influence him not to go voluntarily before the grand jury. I think that's the equivalent.

MR. DE PETRIS: Finally, your Honor, would you make a finding concerning his motive, that is, do you find beyond a reasonable doubt that his motive or a substantial or primary motive -- withdrawn. Let me start again.

Do you find beyond a reasonable doubt that the primary motive of Mr. Fayer was to protect the Bernsteins?

THE COURT: I find that that was one of the motives, clearly, but I cannot find beyond a reasonable doubt that that was the only motive, because it seems to me that on the basis of the record it's quite possible to find that he was in good faith or very foolishly trying to advise Goodwin with respect to Goodwin's rights in the hope of assisting Goodwin as a friend of the Bernsteins. That's the problem with the case.

MR. DE PETRIS: Does your Honor make a finding with respect to motive with regard to Mr. Fayer's financial interest with respect to Eastern Service Corporation?

THE COURT: No, I don't think there's anything to that. There's no proof of that sufficient to make any finding.

MR. DE PETRIS: Does your Honor finally, with regard to this count, is your Honor's decision based on your interpretation of the legal meaning of "corruptly"?

THE COURT: No, because I think under any definition of "corruptly" this result would be required. I think, myself, it would be corrupt for him to have advised had he not had as one of the subsidiary motives the giving of legal advice in good faith to Goodwin; that is, if the whole thing were set up to protect the Bernsteins rather than Goodwin, I would have found him guilty, but I do not think that, considering the whole matter, there is a very substantial doubt about whether he was not also concerned with Goodwin in good faith as a lawyer, although a lawyer acting so foolishly as to almost defy belief. But being foolish is not a crime.

MR. DE PETRIS: Might I have a moment, your Honor.

THE COURT: Yes.

MR. DE PETRIS: Does your Honor make any finding with respect to which of the two motives that your Honor has referred to protecting the Bernsteins and advising Goodwin as a lawyer, as a friend of the Bernsteins, as to which was [illegible] bribery?

THE COURT: No, I can't. They were both involved, intertwined. I couldn't make that determination, certainly not beyond a reasonable doubt.

MR. DE PETRIS: Finally, your Honor, the Government would ask, and I use the word "finally" quite a bit. I'm sorry about that. The Government would ask that your Honor make a finding, reach a verdict and special findings of fact with respect to the lesser included offense under Section 201(h) of Title 18.

I was not here last Thursday when your Honor made a ruling on the bribery count, and so I have ordered the transcript, but it has not been reached yet, but I have a general idea what your findings were with respect to that count. I would ask your Honor to make that specific finding.

MR. KORSHIN: Might I have a look at the section? By number I don't remember it.

THE COURT: I make a finding under 201(h) the Government did not prove its case beyond a reasonable doubt for the reasons I stated at the last session.

MR. DE PETRIS: I would ask for special findings with respect to that count, too.

Does your Honor find beyond a reasonable doubt there was a grand jury proceeding in this court?

THE COURT: I do.

MR. DE PETRIS: Does your Honor find beyond a reasonable doubt the defendant was aware of that proceeding?

THE COURT: I do.

MR. DE PETRIS: Does your Honor find beyond a reasonable doubt that Mr. Goodwin was a witness in that proceeding?

THE COURT: I do.

MR. DE PETRIS: Does your Honor find beyond a reasonable doubt that the defendant knew or reasonably expected Goodwin to be a witness?

THE COURT: I do.

MR. DE PETRIS: As I understand it, your Honor found -- made a finding of fact last time beyond a reasonable doubt that Mr. Fayer did aid and abet the Bernsteins' offer of something of value; that is --

THE COURT: No, I did not so find. I said he was aware of it, but he did not aid or abet and in my opinion the decision had been made before he even came into the picture.

MR. DE PETRIS: Does your Honor find beyond a reasonable doubt that on the date in question on the tape that Mr. Fayer participated in an offer of something of value on that date?

THE COURT: I do not.

MR. DE PETRIS: Does your Honor find beyond a reasonable doubt that the Bernsteins made an offer of something of value on that date?

THE COURT: They have made it on that date and they made it before. They made it the day before and confirmed it on that date.

MR. DE PETRIS: Does your Honor find beyond a reasonable doubt that Mr. Fayer participated in that discussion?

THE COURT: He was present, but he did not participate in that offer or in renewal of the offer.

MR. DE PETRIS: As I understand your findings of last week, you found there was a reasonable doubt on the question of willfulness and specific intent.

THE COURT: That's correct.

MR. DE PETRIS: So the Government was pointing out today under the gratuity count, willfulness, specific intent is not an element of crime, and therefore we would submit that Mr. Farley is guilty beyond a reasonable doubt.

THE COURT: He isn't. The Bernsteins, as it turned out from the tape, were vicious manipulative people. You can't find a lawyer guilty of crimes because he'is in good faith advising a client who's going ahead and continuing to commit other independant crimes. I just don't find beyond a reasonable doubt that this defendant was engaged in a conspiracy with the Bernsteins. I don't think that was his role here, beyond a reasonable doubt. With the preponderance standard or clear and convincingly standard, which may apply in a disciplinary hearing, and I certainly said I make no such findings. I'm dealing with beyond a reasonable doubt standards in a criminal case.

MR. DE PETRIS: Does your Honor find the offer made on the date of the tape -- find beyond a reasonable doubt that the offer that was made on the date of the tape with respect to the attorney's fees and private employment was made for or because of the testimony to be given by Goodwin before the grand jury?

THE COURT: Which tape? There were two tapes. The offer was made --

MR. DE PETRIS: The restaurant tape.

THE COURT: An offer was made by the Bernsteins the day before and it was renewed again in a sense by reminding Goodwin of it. This defendant, I don't find, participated in it beyond a reasonable doubt.

MR. DE PETRIS: Your Honor, as I recall the offer of a job with the Bernsteins was on the 9th, the date Mr. Fayer --

THE COURT: It's clear from the tape it had been a continuing offer they made before, but that was an understanding they had, at least I don't find beyond a reasonable doubt to the contrary.

MR. DE PETRIS: Is your Honor's decision based upon the fact this was a continuing crime and therefore as a matter of law Mr. Fayer could not participate in it --

THE COURT: No, that is not so. He could have been an aider and abettor even if it was continuing.

MR. DE PETRIS: Your Honor, that is all the special findings. I would like to advise the Court we do intend to refer it to the Bar Association. Too, we're going to study the transcript. I assume your Honor is aware of the Supreme Court opinion in the U.S. v. Jenkins, which came down this week. If not, I have a copy of it here.

THE COURT: Let me see it. I have read all the advance sheets. Let me see it.

(A document is handed to the Court.)

THE COURT: No, I haven't seen Jenkins.

MR. DE PETRIS: I would then ask your Honor to read it.

THE COURT: It's marked the 25th. That was --

Due and timely service of ONE copies of the within APPENDIX is hereby admitted this 25TH day of OCTOBER 1977

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Attorney for APPELLEE

RECEIVED
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Joanne